147 U.S. 370

RECORD, CASE No. 15,176.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 1206.

GEORGE H. WALTER, TREASURER OF CHARLESTON COUNTY; HUGH FERGUSON, SHERIFF OF CHARLESTON COUNTY, ET AL., APPELLANTS,

vs.

THE NORTHEASTERN RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED OCTOBER 22, 1892.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 8, 1892.

1 THE UNITED STATES OF AMERICA, *District of South Carolina,* } *To wit:*

In the Circuit Court, Fourth Circuit. In Equity.

At a circuit court of the United States for the fourth circuit, in and for the district of South Carolina, begun and holden at Charleston, S. C., in the district aforesaid, on the first Monday in April, 1892, before the judges of the said United States for the district of South Carolina, holding said circuit court according to the form of the act of Congress in such case made and provided, the following proceedings were had:

THE NORTHEASTERN RAILROAD COMPANY, a Corporation under the Laws of the State of South Carolina, Complainant,

vs.

GEORGE H. WALTER, Treasurer of Charleston County; HUGH Ferguson, Sheriff of Charleston County; J. M. Muirhead, Treasurer of Berkeley County; J. B. Morrison, Sheriff of Berkeley County; R. D. Rollins, Treasurer of Williamsburg County; J. E. Brockington, Sheriff of Williamsburg County; H. E. C. Fountain, Treasurer of Florence County; E. W. Johnson, Sheriff of Florence County, All of and Citizens of the State of South Carolina, Defendants.

Be it remembered that heretofore, to wit, the seventh day of March, in the year of our Lord one thousand eight hundred and ninety-two, the said complainant impleaded the said defendants in a bill of complaint, which bill of complaint is in the words & tenor following:

2 *Bill of Complaint.*

THE UNITED STATES OF AMERICA, *District of South Carolina.* }

In the United States Circuit Court. In Equity.

To the judges of the circuit court of the United States for the district of South Carolina:

The Northeastern Railroad Company, a corporation under the laws of the State of South Carolina, brings this its bill against George H. Walter, treasurer of Charleston county; Hugh Ferguson, sheriff of Charleston county; J. M. Muirhead, treasurer of Berkeley county; J. B. Morrison, sheriff of Berkeley county; R. D. Rollins, treasurer of Williamsburg county; J. E. Brockington, sheriff of Williamsburg county; H. E. C. Fountain, treasurer of Florence county; E. W. Johnson, sheriff of Florence county, all of and citizens of the said State of South Carolina; and thereupon your orator complains and says:

First. That your orator is a corporation duly incorporated under

the laws of the State of South Carolina and located and carrying on business in the said State of South Carolina.

Second. That all of the defendants are inhabitants and citizens of the State of South Carolina, and that the defendant George H. Walter is treasurer of Charleston county, and that the defendant Hugh Ferguson is sheriff of Charleston county, and that the defendant J. M. Muirhead is treasurer of Berkeley county, and that the defendant J. B. Morrison is sheriff of Berkeley county, and that the defendant R. D. Rollins is treasurer of Williamsburg county, and that the defendant J. E. Brockington is sheriff of Williamsburg county, and that the defendant H. E. C. Fountain is treasurer of Florence county, and that the defendant E. W. Johnson is sheriff of
3 Florence county.

Third. That your orator is the owner of a large amount of real and personal property, to wit, a road-bed, tracks, depots, depot grounds, cars, locomotives, rolling stock, and generally the real and personal property requisite and proper for the purposes of carrying on the business of a railway corporation.

That by sections 180, 181, 182, and 183 of the General Statutes of the State of South Carolina it is provided:

180. The president and secretary of every railroad company whose track or road-bed or any part thereof is in this State shall annually, between the first of January and 20th February, return to the comptroller general, under their oaths, the total length thereof in each county, city, town, and incorporated village in this State; the total length of their double track in this State and the length thereof in each county, town, city, and incorporated village of this State; the total length of all their side tracks, and the length thereof in each city, county, town, and incorporated village in this State; the location and value of all their shops, depots, grounds, station-houses, wood and water stations, buildings, stationary engines, tools, implements, and fixtures in this State, and all other real estate necessary to the daily running operations of the road; the number and value each of all their locomotive engines, passenger, freight, platform, gravel, construction, hand, and other cars; the value of their moneys and credits; the total value of the entire road, appurtenances, and equipments, and the total value of said road in this State, with its appurtenances and equipments.

181. The president and secretary of every railroad company mentioned in the preceding section shall also, annually, between the first of January and the 20th February, return to the county auditor of each county in South Carolina, through or into which such road or any part thereof may be located, a statement
4 of the value of said road and the property of the company in said county, and in each of the towns, cities, and villages of said county through or into which said road or part thereof is located, in the manner and form prequired by this chapter in the return to the comptroller general.

182. In ascertaining the value of the road and property of any railroad company, the value of the right of way, bed, and track of the whole road shall be fixed, and such value apportioned *pro*

rata to each mile of the main track, and to the value of the number of miles of main track in each town, city, and incorporated village of each county in this State, through and into which said road is located, shall be added the value of the real estate, fixtures, stationary engines, tools, implements, machinery, and other stationary property provided for use in the daily operations of the road, situate in said town, city, or village, and the total value of the rolling stock, moneys, and credits shall be apportioned *pro rata* to each mile of the main track of said road, and the amount thereof, according to the number of miles of main track in each town, city, and village respectively, and the aggregate value of said road and property in this State, and in each county, city, town, and incorporated village of this State through or into which said road is located shall be stated in said returns.

183. The said return and oath required of officers of railroad companies shall be made in such form as shall be prescribed by the comptroller general.

Fourth. That in pursuance of the requirements of these sections your orator on the twelfth day of February, 1891, made its returns to the comptroller general and to the several county auditors under the oath of its president and secretary and in the form prescribed by the said comptroller general.

That said returns fully conformed in all respects to the requirements of the aforesaid sections of the General Statutes.

Fifth. That all real property in the State of South Carolina assessed for taxation has been heretofore and is now assessed for taxation at an uniform rate of from fifty to sixty per cent. of its actual value and that personal property is assessed at the same or less; that in making its said returns your orator returned its property at the accustomed valuation heretofore placed upon the same, say at from sixty to sixty-five per cent. of the same, which was at least fully equal to and in reality much higher than the relative valuation at which property, real and personal, was returned and assessed in the hands of other classes of property-holders according to the uniform rule accepted and acted upon by the assessing officers and boards of said State.

Sixth. That after the returns so made by your orator were duly delivered to and filed with the comptroller general and the county auditors as required by sections 180 and 181 aforesaid, to wit, 19th May, 1890, the State board of equalization for railroads met in the city of Columbia and proceeded to consider the returns of the various railways, including the returns so made by your orator.

That upon and after such consideration the said boards of equalization raised the assessment of the property of your orator from about $14,000 per mile, as returned by your orator, to $17,000 per mile, and at the same time raised the assessed value of the depots, etc., of your orator from $193,260, as returned by your orator, to $197,000.

That at the same time the said board of equalization undertook to and did raise the assessed valuation of nearly all the other railway

companies in the State in varying amounts from double to treble the valuation as contained in the several returns of said railway companies.

Seventh. And your orator is informed and believes and so alleges and charges that the said State board of equalization for railways,

6 well knowing that the valuation and assessment of the property of your orator and the other railway companies in the said State as made in their said returns were fully equal to and the same as the average and uniform valuation of similar real and personal property in the hands of other property-holders throughout the said State, did nevertheless arbitrarily value and assess the property of your orator and the other railway companies in said State at a much higher rate of taxation; that the county auditors and county boards of assessment throughout the said State had concurred in establishing a rule of valuation by which real and personal property (except money) was assessed at about fifty to sixty per centum of its actual value, whereas by the action of the State board of equalization for railroads the property of your orator and the other railway companies in the State was assessed for taxation at a value fully equal to and even greater than its actual value.

Eighth. And your orator is informed and believes and so alleges and charges that the said State board of equalization were well aware of the rule of appraisement or assessment of property throughout the State whereby real and personal property in the hands of individuals and corporations other than railway companies were assessed or appraised at not exceeding fifty to sixty per centum of its actual value, but, notwithstanding, appraised and assessed the property of your orator and the other railway companies in the said State at more than its actual value, with the intent thereby to cast a greater proportion of the burden of taxation upon one particular class of property-holders, to wit, the railway companies, and to shield and protect from bearing their just share of such public burden the other and individual classes of property-holders in the said State.

Ninth. That the constitution of South Carolina, art. 1, sec. 36, provides that—

"All property subject to taxation shall be taxed in proportion to its value."

7 And by art. 9, sec. 1, that—

"The General Assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal, and possessory."

Tenth. That the overtaxation of the property of your orator and the other railway companies in the said State which has resulted from the said action of the State board of equalization is in direct conflict with the said constitutional directions of the constitution of the State of South Carolina, and operate unequally, not merely upon your orator, but on a large class of corporations, to wit, all the other railway companies in the said State, and that the said State board of equalization so intended and designated it to operate.

Eleventh. That by the said action of the State board of equalization for railroads your orator and the other railway companies in the said State have been denied by the State of South Carolina of the equal protection of its laws, and have by the State aforesaid, acting through its constituted State board for the assessment of the property of railway companies for taxation, been unequally and unjustly assessed and taxed for the benefit of the said State against the provisions of the fourteenth amendment to the Constitution of the United States.

Twelfth. And your orator further shows unto your honors that it is further provided by the said constitution of South Carolina in art. 9, sec. 6, that—

"The General Assembly shall provide for the valuation and assessment of all lands and the improvements thereon prior to the assembling of the General Assembly of one thousand eight hundred and seventy and thereafter on every fifth year."

That by law the lands and improvements thereon of every class of individuals and corporations except railway corporations are assessed and valued for the purpose of taxation on every fifth
8 year and not oftener, and upon such valuation as fixed every fifth year such property-holders are taxed every year during the five years.

That, notwithstanding this constitutional provision, the General Assembly has by law, to wit, by sections 180, 182, and 186 of the General Statutes, hereinbefore set out, directed that the lands and improvements of railway companies shall be assessed for taxation every year and not every fifth year.

That by far the most valuable part of the property of your orator and the other railway companies in the said State consists of land and improvements thereon; that whilst assuming to treat *that* the lands and improvements thereon of your orator and the other railway corporations in the State as personal property for the purposes of assessment and taxation, yet that the said State has attempted by law, to wit, section 179 of the said General Statutes, to provide that such lands and improvements thereon shall for the purposes of the lien and collection of taxes be treated as real property.

And your orator charges that the said sections of the General Statutes of South Carolina providing that the lands and improvements of your orator and the other railway companies in the said State shall be at the same time personal and real property and providing for an assessment thereof for taxation by the State board of equalization for railroads in every year are unconstitutional, null, and void and operate to deprive your orator and the other railway companies in the State of their property without due process of law, and to deny to your orator and the said companies the equal protection of the laws of the said State.

Thirteenth. And your orator further shows that the action of the State board of equalization for railroads in raising the valuation of the property of your orator and the other railway companies in the said State over the value thereof as returned as aforesaid and
9 up to and extending the actual value thereof was invalid, null,

and void, and such increased assessment is null and void, and any levy or tax charge based upon so much of such assessment as — in excess of the returns of your orator and the other railway companies in the State is null and void.

Fourteenth. That the lands, improvements, and other real and personal property of your orator are situate in the following counties in the said State, to wit:

Charleston, Berkeley, Williamsburg, and Florence.

That by the returns of your orator as aforesaid its real and personal property was duly returned for taxation, as is fully set out in the said return filed in the office of the comptroller general.

That the valuation of your orator's property as contained in said returns is a true and correct valuation of the same according to and under the uniform rules and methods of valuation adopted for taxation of similar real and personal property throughout the State by all other officers and boards for assessment.

Fifteenth. That by the constitution of South Carolina an annual tax of two mills for school purposes is levied on all real and personal property in the said State.

That by the act entitled "An act to raise supplies and make appropriations for the fiscal year commencing November 1st, 1890," there was a tax of 4¾ mills levied on all real and personal property in the State for State purposes for the fiscal year beginning 1 November, 1890.

That in addition thereto there was levied under said act for county and all other purposes—

In the county of Charleston, 1⅞ mills.
In the county of Berkeley, 5⅛ "
In the county of Williamsburg, 5¾ mills.
In the county of Florence, 3½ mills.

That by the terms of a joint resolution of the General Assembly which became of force 16th December, 1891, the time for paying all the said taxes was extended up to and inclusive of the 20th February, 1892.

Sixteenth. That on the 19th February, 1892, your orator duly tendered to the said defendants, George H. Walter, county treasurer of Charleston county; J. M. Muirhead, county treasurer of Berkeley county; R. D. Rollins, country treasurer of Williamsburg county; H. E. C. Fountain, county treasurer of Florence county, the amounts due for taxes under the several tax levies aforesaid computed upon the valuation of the property of your orator in the said several counties as returned by your orator for taxation as aforesaid, to wit:

To the said county treasurer for Charleston county----	$2,297 71
To the said county treasurer for Berkeley county-------	7,088 79
To the said county treasurer for Williamsburg county--	6,286 53
To the said county treasurer for Florence county-------	2,672 80

Seventeenth. That in addition thereto your orator tendered to the county treasurer for Charleston county the sum of eight hundred and thirteen $\frac{87}{100}$ dollars, the same being the sum assessed by the

comptroller general upon your orator for the expenses of the railroad commission under section 1453 of the General Statutes, and the same being by said comptroller general directed to be paid to and received by the said George H. Walter, county treasurer for Charleston county.

Eighteenth. And your orator charges that it so duly tendered in full and offered to pay without any conditions soever annexed to the receipt thereof the entire amount of taxes by it lawfully due and owing by law in the said several counties, being the entire tax to be paid by your orator by law in the said State.

And your orator further shows that the said defendants, the county treasurers aforesaid, all refused and declined to re-
11 ceive the same unless your orator would also pay the taxes unlawfully claimed to be due in excess of the amount so tendered and based upon the tax calculated upon the said unlawful increased assessment made by said State board of equalization for railroads over the returns of your orator as aforesaid.

Nineteenth. That the amount so claimed by the defendants, county treasurers, under said unlawful assessment and disputed and controverted by your orator is largely in excess of two thousand dollars, to wit, it is—

In the county of Charleston	$177 67
In the county of Berkeley	1,511 16
In the county of Williamsburg	1,332 50
In the county of Florence	571 33

Making the total amount in the whole sum of three thousand five hundred and ninety-two $\frac{66}{100}$ ($3,592.66) dollars.

Twentieth. That your orator has been and is now ready and willing to pay the taxes lawfully due and tendered by it as aforesaid, but so it is the said defendants, the county treasurers in and for the said several and respective counties, absolutely decline and refuse to receive the same and all claim and pretend that they are all required by the comptroller general of the State to decline and refuse to receive the same and every part of the amount so tendered; and your orator further shows that the said defendants, the said several county treasurers, threaten and are about to issue their several executions to the said several defendants, the sheriffs in and for the said several counties, directing them to levy upon, seize, take hold, and sell the property of your orator in the said several counties for the payment of the taxes so unlawfully claimed, to wit, as well for the payment of the taxes so claimed as the amount so tendered as aforesaid.

And your orator further shows that the said several de-
12 fendants, the sheriffs for the said several counties in said State, threaten and declare that they will, in pursuance of the said several executions to them to be issued, seize, take hold, and sell the property of your orator in the said several counties.

Twenty-first. And your orator further charges and alleges that such seizure and holding possession and sale of your orator's rolling stock and personal property must result in great and irreparable sac-

rifice and loss to your orator; that it will prevent the carrying on of your orator's business as a common carrier by the withdrawal from complainant's use of the rolling stock, engines, and cars necessary for its business.

And your orator further shows that the said contemplated issue of tax executions and seizure and detention of complainant's property will so put a stop and cessation to your orator's carrying on of its operations; that it will thereby imperil its franchises and charter as a corporation by inability to perform the public duty imposed on it of transporting freight and merchandise.

Twenty second. And your orator charges and shows that by law and the said section 179 of the General Statutes said taxes are made a lien upon the real estate of your orator and the other railway corporations in the State and will stand and remain as a lien and a cloud upon the same unless removed by decree or restraint perpetually by the injunction of a court of equity.

Twenty-third. And your orator further charges and shows that it has no adequate remedy at law in the premises; that the remedy and the only remedy at law is to pay the entire tax claimed and then sue to recover back the excess disputed; that in such action your orator will not be allowed to recover or receive any costs in case of success and will be compelled to bring separate and independant actions against all of the said several county treasurers,
13 defendants herein, in each and every county in the State in which your orator has property or in which its taxes are payable, to which great multiplicity of actions to establish exactly the same result and the great consequent cost and expense your orator will be forced unless the equitable remedy and jurisdiction of this court can be invoked for your orator's assistance.

Twenty-fourth. That the said unconstitutional and unlawful overvaluation of property as made by the State through its State board of equalization for railroads has arisen from the adoption of a rule of appraisement which conflicts with a constitutional direction and operate- unequally, not merely on your orator, but on all the other railway companies in the said State.

Twenty-fifth. And your orator further shows unto your honors that it is advised and believes that your orator in law and equity and good conscience ought to be protected from any such wrong and fraudulent acts and such violations of its property rights by the provisions of the Constitution of the United States and settled adjudications of the Supreme Court of the United States construing and applying said provisions of the said Constitution.

Twenty-sixth. That your orator is remediless in the premises in a court of law, and therefore applies and appeals to this honorable court, sitting in equity and having peculiar and full power in this behalf and jurisdiction in the premises by virtue of the premises and of the Constitution of the United States, that all of the said actions and doings of the said defendants are contrary to equity and good conscience and tend to the manifest wrong, injury, and oppression of your orator in the premises.

To the end, therefore, that your orator, the said Northeastern

Railroad Company, may have that relief which it can only obtain in a court of equity; that the defendants may answer the premises, and that your honors will declare, decree, and adjudge that the said assessment so made by the said board of equalization
14 for railroads is unconstitutional, null, and void and denies to your orator the due protection of the laws of the said State, and that the proper and only lawful tax to be levied on and paid by your orator is the amount so tendered by it as aforesaid, and that your orator have leave to pay the same into this court and be thereupon thereafter forever discharged therefrom and from all liability for taxes for the fiscal year beginning 1 November, 1890;

And that the said defendants, George H. Walter, treasurer of Charleston county; Hugh Ferguson, sheriff of Charleston county; J. M. Muirhead, treasurer of Berkeley county; J. B. Morrison, sheriff of Berkeley county; R. D. Rollins, treasurer of Williamsburg county; J. E. Brockington, sheriff of Williamsburg county; H. E. C. Fountain, treasurer of Florence county, and E. W. Johnson, sheriff of Florence county, and all persons acting under them and each and every of them be forever restrained and enjoined from issuing any executions against or seizing, taking possession, or selling the property of your orator or any part thereof for the purposes of collecting the said taxes or any part thereof;

And that your orator may have such further or other relief, or both, as to your honors shall deem meet and proper—

May it please your honors to grant unto your orators a writ of subpœna to be directed to the said George H. Walter, treasurer of Charleston county; Hugh Ferguson, sheriff of Charleston county; J. M. Muirhead, treasurer of Berkeley county; J. B. Morrison, sheriff of Berkeley county; R. D. Rollins, treasurer of Williamsburg county; J. E. Brockington, sheriff of Williamsburg county; H. E. C. Fountain, treasurer of Florence county; E. W. Johnson, sheriff of Florence county, commanding them at a certain day and under a certain penalty to be and appear before your honor- in this honorable court, then and there to answer the premises, an answer
15 under oath being hereby waived, and to stand to and abide such order and decree therein as your honors shall deem agreeable to equity and good conscience.

And your orator will ever pray, etc.

FITZSIMONS & MOFFETT,
Compl't's Sol'rs.
MITCHELL & SMITH, *Of Counsel.*

STATE OF SOUTH CAROLINA, }
County of Charleston. }

Personally appeared A. F. Ravenel and made oath that he is the president of The Northeastern Railroad Company, complainant named in the foregoing bill, and that the foregoing bill of complaint is true so far as the matter and facts therein stated are of

deponent's knowledge, and so far as they are stated on the information of others he believes it to be true.

A. F. RAVENEL,
President N. E. R. R. Co.

Sworn to before me this seventh day of March, 1892.

GEORGE H. MOFFETT,
[SEAL.] *Notary Public for S. C.*

Filed 7th March, 1892.

16 *Subpœna.*

UNITED STATES OF AMERICA, }
District of South Carolina, Fourth Circuit. }

The President of the United States of America to George H. Walter, treasurer of Charleston county; Hugh Ferguson, sheriff of Charleston county; J. M. Muirhead, treasurer of Berkeley county; J. B. Morrison, sheriff of Berkeley county; R. D. Rollins, treasurer of Williamsburg county; J. E. Brockington, sheriff of Williamsburg county; H. E. C. Fountain, treasurer of Florence county; E. W. Johnson, sheriff of Florence county, all of and citizens of the State of South Carolina:

You are hereby strictly commanded and firmly enjoined that, all manner of excuses being laid aside, you be and appear before the judges of the circuit court of the United States for the district of South Carolina, at Charleston, on the rule- day of April twenty days after the service thereof, then and there true and perfect answer to make upon your corporal oath on the Holy Evangelists to all such matters as shall be objected against you in the bill of complaint of the Northeastern Railroad Company, a corporation under the laws of the State of South Carolina.

And also that you do on the rules day next immediately after the day appointed and expressed file or cause to be filed in the registry of said court your plea, answer, or demurrer to the said bill of complaint.

Hereof fail not, under the pain of one hundred pounds.

Given under the seal of the said court.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States of America, at Charleston, in South Carolina, district aforesaid, the seventh day of March, in the year of our Lord one thousand eight hundred and ninety-two, and in the one
17 hundred and sixteenth year of the sovereignty and Independence of the United States of America.

FITZSIMONS & MOFFET,
Compl't's Sol'rs.
MITCHELL & SMITH, *Of Counsel.*

Memorandum.

The defendants will take notice that they are required to enter their appearance in this suit in the clerk's office of the circuit court

of the United States for the district of South Carolina on or before the first Monday of April, 1892; otherwise the bill will be taken *pro confesso* against them.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

[SEAL.]

Filed 7th March, 1892.

18 *Marshal's Return.*

UNITED STATES OF AMERICA,
District of South Carolina.

Circuit Court. In Equity.

THE NORTHEASTERN RAILROAD COMPANY, Complainant,
vs.
GEORGE H. WALTER, Treasurer of Charleston County; HUGH FERGUSON, Sheriff of Charleston County, *et al.*, Defendants.

STATE OF SOUTH CAROLINA,
Florence County.

Geo. S. Turbeville, being duly sworn, says that he served the within process, to wit, *subpœna ad resp.*, notice of motion, and restraining order, by delivering a copy of the same to H. E. C. Fountain and E. W. Johnson at Florence, S. C., personally on the 8th day of March, 1892.

GEO. S. TURBEVILLE.

Sworn to and subscribed before me this 23rd day of March, 1892.

[SEAL.] Z. T. KENSHAW, *C. C. C. P.*

UNITED STATES MARSHAL'S OFFICE,
South Carolina District.

CHARLESTON, S. C., *March 7th*, 1892.

I hereby depute W. H. Kinder to execute the within process.

G. I. CUNNINGHAM,
U. S. Marshal.

19 STATE OF SOUTH CAROLINA,
County of Charleston.

Personally appeared before me W. H. Kinder, who on oath says that he executed the within process, to wit, the *subpœna ad re.* in the cause of The Northeastern Railroad Company against George H. Walter and others, by delivering copies of the same personally to the defendants R. D. Rollins, treasurer of Williamsburg county, and J. E. Brockington, sheriff of Williamsburg county, at their respective offices, at the court-house, in the town of Kingstree, South Carolina,

on the 8th day of March, A. D. 1892, at the hour of 12.50 o'clock in the afternoon, and leaving said copies with said defendants.

W. H. KINDER.

Sworn to before me this 9th day March, 1892.

[L. S.] R. G. O'NEALE,
Notary Public.

UNITED STATES MARSHAL'S OFFICE,
South Carolina District.

CHARLESTON, S. C., *March 8th*, 1892.

I hereby depute Lee Royall to execute the within process.

G. I. CUNNINGHAM,
U. S. Marshal.

STATE OF SOUTH CAROLINA,
County of Charleston.

CHARLESTON, S. C., *March 9th*, 1892.

I hereby certify that I executed the within process, to wit, the *subpœna ad re.*, in the cause of The Northeastern Railroad Company, complainant, against George H. Walter, treasurer Charleston county, and others, by delivering copies of the same personally to the
20 defendants, J. M. Muirhead, treasurer of Berkeley county, and J. B. Morrison, sheriff of Berkeley county, at their respective offices, at the court-house, in the town of Mt. Pleasant, South Carolina, on the 8th day of March, A. D. 1892, at 10.40 o'clock in the forenoon, and leaving said copies with said defendants.

LEE ROYALL.

This certificate sworn to and subscribed before me this 9th March, 1892.

W. HUGER FITZSIMONS,
[SEAL.] *Notary Public, S. C.*

Wm. Reed, dep'ty U. S. marshal, sworn, says that on March 7th, 1892, in Charleston, S. C., he personally served Hugh Ferguson, sheriff, and George H. Walter, Co. treasurer, each with a copy of the *sub. ad respondendum* in this case.

WILLIAM REED, *D. M.*

Sworn to before me this 19th March, 1892.

J. WESLEY SMITH,
U. S. Comm'r.

Entered in docket "civil cases," folio 176, March 7th, 1892.

G. I. CUNNINGHAM,
U. S. Marshal.

21 *Appearance.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court. In Equity.

THE NORTHEASTERN RAILROAD COMPANY, Complainant,
vs.
GEORGE H. WALTER, Treasurer Charleston County; HUGH FERGUSON, Sheriff Charleston County, *et al.*, Defendants.

We appear for the defendants in the above-entitled cause.

J. L. McLAURIN, *Att'y Gen'l of State, D'f'd'ts' Sol'r.*
SAMUEL LORD & IRA B. JONES, *Of Counsel.*

Filed 24th March, 1892.

22 *Demurrer.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the United States Circuit Court. In Equity.

THE NORTHEASTERN RAILROAD COMPANY
against
GEORGE H. WALTER, Treasurer of Charleston County; HUGH FERGUSON, Sheriff of Charleston County; J. M. Muirhead, Treaserer of Berkeley County; J. B. Morrision, Sheriff of Berkeley County; R. D. Rollins, Treasurer of Williamsburg County; J. E. Brockington, Sheriff of Williamsburg County; H. E. C. Fountain, Treasuier of Florence County; E. W. Johnson, Sheriff of Florence County.

The demurrer of George H. Walter, one of the above-named defendants, to the bill of complaint of the above-named plaintiff.

These defendants, by protestation, not confessing or acknowledging all or any of the matter- or things in the said bill of complaint contained to be true in such manner and form as the same are herein set forth and alleged, do demur to said bill and for causes of demurrer shew:

1. That this court has no jurisdiction of this cause, because it appeareth by the plaintiff's own showing that the matter in controversy between the complainant and each of these defendants is less than two thousand dollars, and the controversy is one as to which complainant might have maintained a separate action at law against each of these defendants.

2. That the complainants had a complete and adequate remedy at law.

23 3. That it appeareth by the plaintiff's own showing by the said bill that he is not entitled to the relief prayed by the bill against these defendants or any of them.

Wherefore, and for divers other good causes of demurrer appearing in this bill, these defendants do*th* demur thereto, and they pray the judgment of this honorable court whether they shall be compelled to make answer to the said bill, and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

J. L. McLAURIN,
Att'y Gen'l, Defendants' Solicitor.

I hereby certify that the above demurrer is, in my opinion, well founded in point of law.

J. L. McLAURIN,
Defendants' Solicitor.

STATE OF SOUTH CAROLINA, }
District of South Carolina. }

George H. Walter, being duly sworn, deposes and says: I am one of the defendants in the above-named case. The forgoing demurrer is not interposed for delay.

GEORGE H. WALTER,
Treasurer Charleston County.

Sworn before me this 8th day of July, 1892.

J. H. BRYCE,
Notary Public.

Filed 15th July, 1892.

Similar demurrers were filed by each of the defendants above named on the same day that the foregoing demurrer was filed.

24 *Order Overruling Demurrers & Restraining Order.*

UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court. In Equity.

THE NORTHEASTERN RAILROAD COMPANY, Complainant, }
vs. }
GEORGE H. WALTER, Treasurer, *et al.*, Defendants. }

This cause having come on to be heard upon the bill and demurrers herein at the April term, 1892, and counsel on both sides having been heard, it is, upon full consideration thereof—

Ordered, adjudged, and decreed that the demurrers herein be overruled.

It is further ordered, adjudged, and decreed that the defendants herein be each and every of them and the agents, servants, deputies, employees, and attorneys of each and every of them forever

restrained and enjoined from issuing or levying any tax executions or other process against or upon the property of the above-named complainant for the purpose of collecting the taxes, costs, or penalties for State or other purposes in the State of South Carolina for the fiscal year beginning 1st November, 1890, referred to in the bill, and from seizing, holding, taking possession of, or selling any or every part of the same; each party to pay their own costs.

CHARLES H. SIMONTON,
U. S. Judge.

15th July, 1892.

Filed 15th July, 1892.

25 *Assignment of Errors.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the United States Circuit Court. In Equity.

THE NORTHEASTEN RAILROAD COMPANY
vs.
GEORGE H. WALTER, HUGH FERGUSON, *et al.*

Assignment of errors of George H. Walter and others, defendants, appellants, to the order or decree of the court in this suit.

And now come George H. Walter, Hugh Ferguson, J. M. Muirhead, J. B. Morrison, R. D. Rollins, J. E. Brockington, H. E. C. Fountain, E. W. Johnson, defendants, appellants, in the above-entitled suit, and for the purpose of an appeal to the Supreme Court of the United States from the order or decree of this court assign the following errors, separately asserted and intended to be urged, to wit:

1. That the court erred in overruling the demurrer to the jurisdiction of this court, because the matter in controversy between the complainant and the several defendants was several and not joint and the amount involved in each controversy was less than two thousand dollars.

2. Because the complainant is a corporation created by the laws of the State of South Carolina and the defendants are all citizens of the State of South Carolina, and the suit does not present a real and substantial dispute arising under the Constitution of the United States.

3. Because the court erred in holding that the complainant had not a complete and adequate remedy at law and was en-
26 titled to equitable relief, whereas it should have held that the law of South Carolina gave a remedy simple, efficient, and sufficient.

4. Because the court erred in overruling the demurrer interposed on the ground that the plaintiff was not entitled to the relief prayed for.

5. Because the court erred in ordering and decreeing that any injunction could or can be granted in this action, whereas it is respectfully submitted that the complainant has failed entirely to show cause of action entitling it to invoke the equitable jurisdiction of the court, and the bill should therefore be dismissed.

J. L. McLAURIN,
Def'd'ts' Sol'r,
Per S. LORD.

Filed 15th July, 1892.

27 *Petition for Appeal.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the United States Circuit Court. In Equity.

THE NORTHEASTERN RAILROAD COMPANY
vs.
GEO. H. WALTER, HUGH FERGUSON, J. M. MUIRHEAD, J. B. MORRISON, *D.* R. D. Rollins, J. E. Brockington, H. E. C. Fountain, E. W. Johnson.

The above-named defendants, appellants, conceiving themselves aggrieved by the order of decree entered on the 15th day of July, 1892, in the above-entitled proceeding, do hereby appeal from the said order or decree to the Supreme Court of the United States and pray that this their appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said order or decree was made, duly authenticated, may be sent to the Supreme Court of the United States; and they file herewith an assignment of errors which are intended to be urged on the hearing of said appeal.

J. L. McLAURIN,
Per SAM'L LORD,
Def. Sol'rs.

Charleston, S. C., Sept. 15th, 1892.

Filed 15th Sept., 1892.

28 *Order Allowing Appeal.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the United States Circuit Court. In Equity.

THE NORTHEASTERN RAILROAD COMPANY
vs.
GEORGE H. WALTER *et al.*

And now, to wit, on the 3rd day of October, A. D. 1892, it is ordered that the said appeal be allowed as prayed for and that a

citation do issue in accordance therewith, returnable on the 25th day of October, in the year of our Lord eighteen hundred and ninety-two. Let the appellants also enter into bond within ten days from this date, with security to be approved by one of the judges of this court, in the sum of two hundred and fifty dollars, conditioned to pay all costs which may accrue on the said appeal.

CHARLES H. SIMONTON,
U. S. Judge.

3rd October, 1892.

Filed 3rd October, 1892.

29 *Bond.*

The Supreme Court of the United States.

THE NORTHEASTERN RAILROAD COMPANY, Complainant,
against
GEORGE H. WALTER, Treasurer of Charleston County, in the State of South Carolina, Defendant.

Know all men by these presents that we, George H. Walter, treasurer of Charleston county; E. H. Pringle, and Henry Schachte, are held and firmly bound unto the Northeastern Railroad Company in the sum of two hundred and fifty ($250) dollars, to be paid to the said Northeastern Railroad Company, its successors or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated at Charleston this third day of October, A. D. 1892.

Whereas the above-named George H. Walter, treasurer of Charleston county, in the State of South Carolina, hath prosecuted an appeal in the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the eastern district of South Carolina on the 15th day of Feb., A. D. 1892:

Now, therefore, the condition of this obligation is such that if the above-named Geo. H. Walter, treasurer of Charleston county,
30 in the State of South Carolina, shall prosecute his said appeal to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

Sealed and delivered in presence of—

GEO. H. WALTER,
Treasurer Charleston Co. [SEAL.]
E. H. PRINGLE. [SEAL.]
HENRY SCHACHTE. [SEAL.]

Witness to all signature-:
GEO. W. McCORMACK.

UNITED STATES OF AMERICA,
Eastern District of South Carolina.

E. H. Pringle and Henry Schachte, being duly sworn, deposes and say and each for himself deposes and says that he is worth the sum of two hundred & fifty dollars over and above all his just debts and liabilities.

E. H. PRINGLE.
HENRY SCHACHTE.

Sworn to before me this 3rd day of October, 1892.

W. M. GOURDIN,
U. S. Commissioner.

I approve the above bond and the sufficiencies of the securities thereto.

CHARLES H. SIMONTON,
U. S. Judge.

3rd Oct., 1892.

Filed 3rd Oct., 1892.

31 UNITED STATES OF AMERICA, *ss:*

To the Northeastern Railroad Company, Greeting:

You are hereby admonished to be and appear at a Supreme Court of the United States, at Washington, on the 25th day of October, in the year of our Lord one thousand eight hundred and ninety-two, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of South Carolina, wherein George H. Walter, Hugh Ferguson, J. M. Muirhead, J. B. Morrison, R. D. Rollins, J. E. Brockington, H. E. C. Fountain, and E. W. Johnson are appellants and The Northeastern Railroad Company is respondent, to show cause, if any there be, why the judgment in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 3 day of Oct., in the year of our Lord one thousand eight hundred and ninety-two.

CHARLES H. SIMONTON,
U. S. Judge.

32 [Endorsed:] U. S. A, fourth circuit. In the circuit court. The Northeastern Railroad Company *vs.* Geo. H. Walter *et al.* Citation. Filed 3 October, 1892. J. E. Hagood, C. C. C. U. S., dist. S. C.

I accept service of the within citation October 3d, 1892.

MITCHELL & SMITH.

33 THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit.

I, J. E. Hagood, clerk of said court, do hereby certify that the foregoing is a true and correct copy of the records and proceedings in the case of The Northeastern Railroad Company, complainant, against George H. Walter, treasurer Charleston county; Hugh Ferguson, sheriff of Charleston county, and others, defendants, rendered as aforesaid, together with all things relating to the same, as appears by the records now on file in my office.

Given under my hand and seal of said court, at clerk's office, in the city of Charleston, S. C., this the 4th day of October, A. D. 1892.

[Seal U. S. Circuit Court, District of So. Carolina.]

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

Endorsed on cover: Case No. 15,176. South Carolina C. C. U. S. Term No., 1206. George H. Walter, treasurer of Charleston county; Hugh Ferguson, sheriff of Charleston county, *et al.*, appellants, *vs.* The Northeastern Railroad Company. Filed October 22, 1892.

FILED.
JAN 3 1893
JAMES H. McKENNEY
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1892.

TERM No. 1206.

GEORGE H. WALTER, TREASURER OF CHARLESTON COUNTY; HUGH FURGUSON, SHERIFF OF CHARLESTON COUNTY, ET AL., *Appellants.*

vs.

THE NORTH-EASTERN RAILROAD COMPANY.

TERM No. 1207.

D. E. KEELS, ET. AL.

vs.

THE CENTRAL R. R. CO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

BRIEF OF ARGUMENT FOR APPELLANTS.

D. A. TOWNSEND,
Attorney-General of South Carolina.
SAMUEL LORD,
IRA B. JONES,
Counsel for Appellants.

CHARLESTON, S. C.
WALKER, EVANS & COGSWELL CO., PRINTERS
Nos. 3 and 5 Broad and 117 East Bay Streets.
1892.

Supreme Court of the United States.

OCTOBER TERM, 1892.

TERM No. 1206.

GEORGE H. WALTER, TREASURER OF CHARLESTON COUNTY; HUGH FURGUSON, SHERIFF OF CHARLESTON COUNTY, ET AL., *Appellants.*

vs.

THE NORTH-EASTERN RAILROAD COMPANY.

TERM No. 1207.

D. E. KEELS, ET. AL.

vs.

THE CENTRAL R. R. CO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

BRIEF OF ARGUMENT FOR APPELLANTS.

PLEADINGS.

The defendant in error, a South Carolina Corporation brought its bill of complaint in the Court below against the County Treasurers and Sheriffs of several counties of the State of South Carolina through which its road passes, for

the purpose of having the assessment of its taxes for State, County, and other purposes, for the fiscal year including the year A. D., 1890, declared unconstitutional and void, and of enjoining the issuing and levy of executions for so much thereof as was not tendered by said complainant.

It alleges that the Constitution of the State provides for laws for a uniform and equal rate of assessment and taxation; that real property in the State is assessed at an uniform rate of from fifty to sixty per cent. of its actual value, and personal property at the same rate or less; that complainant returned its property at sixty to sixty-five per cent. of its value; and that the State Board of Equalization for railroads raised the assessment and at same time raised the assessment of nearly all other railway companies in the State.

That the said State Board of Equalization well knowing that the returns of the said companies were equal to the average valuation of similar property in the hands of other property holders of the State, did yet arbitrarily assess the said companies much higher; that the County Auditors and County Boards of Assessment throughout the State had concurred in establishing a rule of valuation by which property except money was assessed at about fifty to sixty per cent. of its value; that the State Railroad Board had assessed said companies at a value equal to and even greater than its actual value; and that the said State Board were aware of the rule of assessment throughout the State whereby property in the hands of individuals and other corporations was assessed at not over fifty to sixty per cent. of its value, but assessed said companies as they did with intent to cast upon them a greater proportion of the burden of taxation, and to protect others therefrom.

That seizing and selling complainants property on execution, must result in irreparable injury; that it will prevent it carrying on its business as a common carrier; that it will thereby imperil its franchises and charter: that it has no adequate remedy at law; that the only remedy at law is to pay the entire tax claimed and sue and recover back the excess and separate suits must be bought therefor in each

county where complainant has to pay taxes, and in these suits it can recover no costs.

The appellants demurred in the Circuit Court, objecting that said Court had no jurisdiction, because the matter in controversy with each of them is less than two thousand dollars; that complainants had a complete and adequate remedy at law; and that the allegations of the bill do not justify the relief asked for.

The Court overruled the demurrers and granted the injunctions prayed for.

The appellants assign errors in said decree, in that the matter in controversy with them was several and not joint and the amount involved in each was less than two thousand dollars: in that the parties are a corporation and citizens, all of the same State, and the suit presents no dispute under the Constitution of the United States, in that there is an adequate, simple, efficient and sufficient remedy by the laws of South Carolina; in that complainants was not entitled to the relief asked for; and that the bill shows no ground for equitable relief.

STATEMENT OF FACTS.

Article 1, Sec. 36, of the Constitution of S. C.

"All property subject to taxation should be taxed in proportion to its value."

ARTICLE IX, SECTION 1.

"The General Assembly shall provide by *law* for a uniform and equal rate of *assessment* and *taxation* and shall prescribe such regulations as shall secure a just valuation for taxation *of all property*, real, personal and possessory."

Article II, Section 33.

"All taxes upon property, real or personal, shall be laid upon the actual value of the property taxed, as the same shall be ascertained by an assessment made for the purpose of laying such tax."

In obedience to these requirements of the Constitution, the legislature has passed laws for the listing and taxing of

all property in the State subject to taxation by a uniform rule and according "to its true value in money." Gen'l Sec. 219.

Instead of having all property subject to taxation valued by one commission, there are in the State of South Carolina two bodies, acting independently of each other in the process of estimating values for taxation.

All real and personal property, except railroads, telegraph and canal companies, is assessed by a board of County Assessors, appointed by the Auditors in and for each township of their respective counties. This board consists of three intelligent and discreet freeholders, resident in the township for which they are appointed. Their duty is to assess the value of real and personal estate in their township.

Personal property is assessed each year.

Article IX, Sec. 6, of the Constitution, directs that a valuation and assessment of lands shall be made every fifth year.

The legislature may, however, order a re-assessment at any time within the five years.

Ex Parte, Lynch, 16 S. C, 32.

The Statute directs that all property shall be valued for taxation at its true value in money, and prescribe with the utmost minuteness the method of ascertaining this money value of all real estate and of all visible and tangible personal property and of all choses in action and other intangible property of every nature and kind.

There is in each county, a County Board of Equalization, which consists of the Chairman of the Township Board of Assessors, of which the County Auditor is the Clerk. It is the duty of this board, Gen'l Stat. 254, to raise the value of real and personal property returned below their true value up to their true value or to reduce the assessment of property returned above to its true value. They are required to hear all grievances and any taxpayer who cannot secure

such relief from the board as he thinks he is entitled to, may appeal to the Comptroller General. This right is not given to the State.

Railroad property is assessed for taxation by a different board, known as the State Board of Equalization, consisting of the Treasurer of State, Secretary of State, Comptroller General, and the Attorney General. The State law provides how the Railroad shall make its return. The corporation for the purposes of the return ascertains and places in its return the valuation of its property in the State and in each county of the State and the law provides how it shall make this valuation. G. Stat. S. C., Sec. 180, 181, 182 and is substantially as follows: Each Railroad Company by its President or chief officer is required, at a specified time to return to the Comptroller General under oath a statement showing the total length of such railroad in the State and in each county, city, town and incorporated village in the State, the location and *value* of all their shops depots, grounds, buildings, &c., and all other real estate necessary to the daily running and operations of the road, the number and value, each, of all their locomotives, engines and cars, the value of their moneys and credits, the total value of the entire road and the total value of the road in South Carolina.

The same officer is required at the same time to return to the County Auditor of each county through which his road passes, a statement of the value of the road and the property of the company in the county and in each of the towns, cities and villages thereof, through or in which the road is located.

The Act provides, that in ascertaining the value of the road and property of any railroad company the value of the right of way, bed and track of the whole road shall be fixed, and such value apportioned *pro rata* to each mile of the main track. To the value of the number of miles of main track in each town, city and incorporated village shall be added the value of the real estate, fixtures and other stationary property provided for use in the daily operations of the road situate in said town, city or village. The value

of the rolling stock, moneys and credits shall be apportioned *pro rata* to each mile of the main track of the road, and the amount thereof according to the number of miles of the main track in each town, city and village added to the value of the main track in such town, city and village.

This return, made by the corporation through its officers, is the statement of its own case in all the particulars that enter into the question of the value of its taxable property.

It is laid before the State Board of Equalization by the Comptroller, and constitutes the matter on which they are to act. They are required (Sec. 186) to meet for that purpose at the office of the Comptroller General at the Capitol, on the day of annually, and equalize the value of the property as returned to the Comptroller, by increasing the value of the roads and property as shall have been, in their judgment, returned at too low a valuation, and diminishing the value of such as may have been returned at too high a valuation.

The Comptroller is to certify to the County Auditor of each County the valuation of the railroad property in said county, as returned to him, with all additions made to or deductions from the valuation of the property of each railroad company by the State Board of Equalization, and the County Auditor is then to charge the railroad company in the several cities, towns and incorporated villages of their county for taxation, with the valuations returned by such company, after adding thereto or deducting therefrom the amounts directed by the Comptroller General.

All taxes, assessments and penalties are declared to be a debt payable to the State by the party charged, and are a first lien in all cases upon the property taxed; Gen. Stat., Sec. 170.

For the purposes of taxation the real estate of railroads in daily use are to be treated as personal property, but the lien of taxes attaches thereto as if it were real property.

Each County Auditor is required to furnish to the County Treasurer on a certain day a tax duplicate, giving a list or schedule of all taxable property in his county and the value thereof, as equalized, with the names of the owners

and the taxes against each parcel of real and personal property; Sec. 237.

6. For the collection of taxes this is the Treasurer's warrant; the County Treasurer is charged with the collection of all taxes placed upon his tax duplicate. and can only discharge himself by showing,

1. That sufficient personal property of the party charged could not be found.
2. That if found, it could not be sold or leased.
3. That the taxes were enjoined by a competent Court.

The Act of 1887, (19 Stat., 862,) directs that the County Treasurer of each county shall, upon the expiration of time allowed for the payment of taxes, issue a warrant against each defaulting taxpayer in his county, directed to the Sheriff, requiring him to levy by distress and sale of the *personal property*, and if sufficient *personal property* cannot be found, then by distress and sale of the defaulter's land, the amount of the tax.

Or the Treasurer may institute suit in his own name for the recovery of the tax.

Gen. Stat., § 281.

By the act of 1890, Vol. 20, p. 652; Sheriffs as to tax executions are made subject to the direction of the Comptroller General, who is invested with all the rights of a plaintiff in execution to compell sheriffs to perform their duties, and the Country Treasurer may also recover from the Sheriff tribble the amount of taxes in an action which the same Statute authorizes him to bring.

The Act of 1887, 19 Stat. 864, Section 3, provides:— "In case the defaulting taxpayer, after levy of distress shall allege that the taxes are unjustly assessed against him, he can and may have such sale suspended, provided before said sale he pays to the Sheriff the amount of taxes and costs named in the warrant, accompanied with his affidavit that said taxes have been unjustly assessed against him and within twenty days thereafter take such steps as are provided by law for the correction of unjust assessment and prosecutes the same to a successful result within a reasonable time."

The tax to be collected in each County by its County Treasurer is a compound tax.

A part is for State purposes, another part is for the exclusive purposes of the particular County and never goes into the State Treasury at all, but is disbursed by the County Commissioners.

General Statutes, Section 610, provide that the County Commissioners shall, pursuant to authority given by special enactment of the General Assembly, make out and deliver to the County Treasurer, with their warrant to collect, a tax-bill for County purposes, signed and sealed by the Commissioners and certified by their clerks, and the Treasurers shall collect said tax in the same manner as provided by law for State taxes.

When the County Treasurer collects the County tax, he pays it out upon the orders of the County Commissioners, except in a few special instances when it is paid direct to the parties entitled. (General Stat. Section 623.)

The School Tax of two mills is a County tax.

Constitution Amendment to Article X, Section 5:—"The boards of County Commissioners of the several Counties shall levy an annual tax of not less than two mills on the dollar of all the taxable property in their respective Counties, * * for the support of the Public Schools in their respective Counties, which tax shall be collected at the same time and by the same officers as the other taxes for the same year."

Paragraph 15 of the Complainants' bill, shows that two mills of the tax levy is for Schools, and four and three-fourth mills for State purposes. The balance is for County and other purposes and the levy varies in different Counties.

The amount tendered by the Complainant is a proportion of the whole of this compound tax, and is not applicable to any particular part thereof, as State, School or County. The balance then or the amount in dispute in each County, is also a Compound amount, embracing a proportion of State, School and County tax.

The entire amount in dispute, adding all the taxes in all the Counties, is $3,592.66. From data furnished in the bill,

this is distributable as follows:—State tax, $1,473.38; County tax, $1,498.83; School tax, $620.37.

Either the County or School part of the tax of all the Counties must be added to the State part of all the Counties, to equal $2,000.00.

STATUTORY REMEDY.

Gen'l Stat., Sec. 171. "The collection of taxes shall not be stayed or prevented by any injunction writ, or order issued by any Court or judge thereof."

Gen'l Stat., 268. "In all cases in which any county, State or other taxes are now or shall be hereafter charged upon the books of any County Treasurer of the State, against any person and such treasurer shall claim the payment of the taxes so charged or shall take any step or proceeding to collect the same, the person against whom such taxes are charged, or such proceeding shall be taken, shall if he conceives the same to be unjust or illegal for any cause, pay the said taxes under protest and upon such payment being made, the County Treasurer shall pay the taxes so collected, into the State Treasury giving notice at the time to the Comptroller General, that the payment was made under protest, and the person so paying said taxes may at any time within thirty days after making such payment, bring an action against said County Treasurer for the recovery thereof in the Court of Common Pleas for the County in which such taxes are payable, and if it be determined in said action that such taxes were wrongfully or illegally collected, for any reason going to the merits, the Court shall certify that the same ought to be refunded and thereupon the Comptroller General shall issue his warrants for the refunding of the taxes so paid, which shall be paid in preference to other claims against the treasury."

Sec. 269. There shall be no other remedy in any case of the illegal or wrongful collection of taxes or attempt to collect taxes than that herein provided, and no writ, order or process of any kind whatsoever, staying or preventing any officer of the State charged with a duty in the collection of taxes, from taking any step or proceeding in the collection

of any tax, whether such tax is legally due or not, shall in any case be granted by any Court, but in all cases whatsoever the person against whom any tax shall stand charged upon the books of the County Treasurer, shall be required to pay the same and thereupon shall have his remedy under the provisions of the next preceeding section.

Sec. 270. "In any action brought under the provisions of this section, no costs or disbursements shall be taxed or allowed in favor of either party, except for the service of process and procuring the attendance of witnesses."

JURISDICTION.

The first question raised by the demurrer is as to the jurisdiction of the Circuit Court.

The complainant and the defendant are citizens of the same State, and, if jurisdiction exists, it must be because the controversy arises under the laws of the United States.

Under the Statutes now of force, to wit:—the Act of August, 1888, the Circuit Court of the United States has not jurisdiction of cases arising under the Constitution or laws of the United States, unless the amount involved, exclusive of interest and costs, exceeds $2,000.00. According to the averments of the bill the whole amount in controversy between the complainant and all the treasurer's amounts to $3,592 66, while the amount in controversy between the complainant and any single treasurer is less than $2,000.00. Thus it appears that to reach the requisite sum, the amounts in dispute between complainant and two or more of the defendant's must be added together. Can this be done?

In determining the jurisdiction of the Supreme Court upon, appeal or writ of error that Court has been repeatedly called upon to determine, "when the matter in dispute" which is the phrase used in Sections 691 and 692 of the Revised Statutes, regulating appeal and writs of error to the Supreme Court, as well as in Section 1 of the Act of August 13th, 1888, prescribing the jurisdiction of the Circuit Courts—exceeds the limits named in the Sta-

tute and these decisions are pertinent to the question now under consideration.

In Seaver vs. Bigelow, 5 Wallace, 208, in which several creditors having judgments, no one of which exceeded $2,000.00, united on a creditors bill to reach a fund in excess of that sum, it was held that an appeal did not lie, it being said:—

"It is true the litigation involves a common fund, which exceeds the sum of $2,000.00, but neither the judgment creditors has any interest in it exceeding the amount of his judgment. Hence, to sustain an appeal in this class of cases, where separate and distinct interests are in dispute of an amount less than the Statute requires, *and where the joinder of parties is permitted* by *the mere indulgence of the Court, for its convenience and to save expense*, would be giving a privilege to the parties not common to other litigants and which is forbidden by law."

In Russell vs. Stansell, 105 U. S., 303, the Court said:—

"While the appellants, and those whom they have been chosen to represent are all interested in the question on which their liabilities to the appellee depends, they are separately charged, with the several amounts assessed against them. *There is no joint responsibility resting on them as a body.* The proceeding on his part was to require each of the several land owners to pay his separate share of the debt that had been established against the district. The recovery was against each separately; while the appellants were permitted for convenience sake and to save expense, to unite in a petition setting forth the grievances of which complaint was made, their object was to relieve each separate owner from the amount for which he personally was accountable. *It is clear that such distinct and separate interests cannot* be united for the purpose of making up the amount necessary to give us jurisdiction on appeal."

In *Hawley vs. Fairbanks, 108 U. S., 543*, several parties having separate judgments against the town of Newberry, united in a petition for a writ of mandamus to compel a County Clerk to levy a tax sufficient to pay the judgments in question. The Trial Court granted the writ commanding the Clerk to extend upon the Tax Collector's book a sum sufficient to pay each of the said judgments held by the relators. To reverse this judgment a writ of error was sued out and in the Supreme Court a motion to dismiss was made on the ground that the amounts of the several judg-

ments could not be added together to make out the amount requisite to confer jurisdiction. The Court held that the proceeding embraced distinct causes of action in favor of different parties, and that the amounts due the several relators could not be added together, but that the jurisdiction depended upon the question whether the amount due any single relator was sufficient to confer jurisdiction. The record showed that the amount due one of the relators exceeded the jurisdictional amount, and the Court retained the case as to that relator but dismissed it as to all the others.

In *Gibson vs. Shufeldt*, *122 U. S.*, *27*, the Court, after an exhaustive review of the prior decisions on this subject, says:

"Generally speaking, however, it may be said that the joinder in one suit of several plaintiffs or defendants, who might have sued or been sued in separate actions, does not enlarge the appellate jurisdiction * * * *that when two persons are sued, by one person in one suit, the test is* whether the defendant's alleged liability to the plaintiff or claim to the property is joint or several."

To the same effect is *Clay vs. Field*, 138 U. S., 479.

"The general principle is that if several persons be joined in a suit in Equity, and have a common and individual interest, though separable as between themselves, the amount of their joint claim or liability will be the test of jurisdiction, but where their interests are distinct, and they are joined for the sake of convenience only, and *because they form a class of parties whose rights or liabilities arose out of the same transaction*, or have relation to a common fund sought to be administered, such distinct demands or liabilities cannot be aggregated together for the purpose of giving this Court jurisdiction by appeal."

In *Nat. Bk. vs. Swenson*, *48 F. R.*, *625*, the Court says:

"The rule deducible from these authorities is, that jurisdiction is not conferred, because a number of persons are interested in a given question, and the aggregate of the several claims may exceed the amount requisite for jurisdiction. The 'matter in dispute' within this meaning of the Statute, is not the principle or rule of decision which is involved in the controversy, and which may be common to the interests of all the parties, to the litigation, but is the money value which is at stake, and the claims of the several parties cannot be added together to form the matter in dispute unless each party has an undivided interest in the property which is the subject of litigation."

In applying these rules to the present case, the Statutes of South Carolina in regard to the rights and duties of the the defendant Treasurers, touching the taxes against the railroad, must be kept in mind.

Long before these proceedings had been instituted the assessment of the complainants property for taxation had under the law of the State been divided among the several Counties. The Comptroller had certified to each County Auditor the valuation of the property in his County; each County Auditor had charged the Railroad Company with the tax upon his books, and had placed it upon the tax duplicates of the County Treasurer. Each Treasurer had thus acquired an independent and separate claim against the road. If there had ever been a common or undivided interest in any fund or in any assessment, or in any tax, such joint interest had been severed, and each held his share in severalty when this bill was filed. This several claim is recognized by every provision of the law. If any of the defendant Treasurers had wished to sue the road to recover the tax as authorized by Sec. 281 of Gen. Stat., his suit must have been a several suit. Two or more could not have united in one suit. If the Company had paid this tax as assessed and brought suit to recover back the disputed part, it is admitted in the bill, that it must have sued each Treasurer separately.

If the Treasurers and Sheriffs of the several counties were undertaking to act upon an authority which for any reason is invalid; each is whether a trespasser or not, acting only with respect to the particular amount allotted to him for collection.

No one has any interest whatever in the amount allotted to any other.

Even if the execution can be considered as directed or capable of being directed against the entire property of the road, the amount in dispute with each officer is the amount claimed on the execution, and not the value of the property.

Ross vs. Prentiss, 3 How., 772.

The county officials claim to collect only what the tax in their respective counties severally amount to.

Their position is like the trespassers in

Tupper vs. Wise and

Lynch vs. Bailey, 110, U S., 398.

where in ejectment, defendants having been sued as joint trespassers, appeared to hold separate parcels of the entire land of plaintiffs, and it was held that the claims could not be joined to give jurisdiction, and not like those in

Friend vs. Wise, 111, U. S., 797,

where the entry and ouster by defendants was joint.

If, then, the Court was right in saying in *Gibson vs. Shufeldt*, "that when two persons are sued by one person in one suit" "the test," whether their claims can be added to give jurisdiction, "is whether the defendant's alleged liability to the plaintiff is joint or several," there can be no doubt that this suit is not within the jurisdiction of the Circuit Court.

It is clear from the record that had separate bills been filed in the Circuit Court against the Treasurers for the purpose of cancelling the assessment complained of, none of them could have been maintained in that Court, because none would have involved a sum exceeding ($2,000), and under the authorities cited it is equally clear that while the joinder of separate and distinct claims or rights of action may be permitted under proper circumstances, for convenience sake and to prevent a multiplicity of suits and to escape unnecessary costs, it is not permitted to add together the several distinct money interests belonging to the litigants in order to create a jurisdiction which does not otherwise exist.

The only controversy in regard to these taxes, which reaches the jurisdictional limit is one between the State and the complainant.

Of this controversy the Federal Courts are denied jurisdiction.

This action can only be sustained (if at al) on the ground that it is a proceeding directed against officers in their official capacity to restrain the performance of a purely Ministerial Act, or against individuals who threaten, under color of office, to commit personal trespasses or wrongs.

In Re., Ayres, 123 U. S., 444.

II.

Another objection to the jurisdiction is, that there is a plain, adequate and complete remedy at law, and therefore this proceeding in equity cannot be maintained.

The statute law of South Carolina, as we have seen, expressly provides that the collection of taxes shall not be stayed by any writ of injunction or order of Court.

It further provides, that in all cases the tax-payer shall, if he conceives a tax assessed against him to be illegal for any cause, pay the tax under protest, and bring an action against the County Treasurer for the recovery thereof in the Court of Common Pleas for the county in which the taxes are payable, and it declares that this remedy shall be exclusive.

This suit may, in proper cases, be brought in the United States Circuit Court.

Van Norden vs. Martin, 99 U. S., 378.

This law is substantially the same as the statutes which which were held in *Tennessee vs. Sneed*, 96 U. S., 69, and *Shelton vs. Platt*, 139, U. S., 597, to be simple and effective.

"*Legislation* of this character," says the Court in the latter case, "has been called for by the embarrassments resulting from the improvident employment of the writ of injunction in arresting the collection of the public revenue."

A similar statute enacted by Congress has been held exclusive. Snyder vs. Clearks, 109 U. S., 189.

"The trespass resulting from proceedings to collect a void tax cannot be restrained by injunction where irreparable or other ground for equitable interposition is not shown to exist."

Shelton vs. Platt, 139 U. S., 600.

It is claimed by the Bill that such grounds exist, and they may be considered under the heads of Irreparable Injury, Cloud upon Title and Multiplicity of Suits.

The first ground may be disposed of by what this Court said of a similar contention in *Allen vs. Pullman*, &c., 139, U. S., 661.

"Complainant could avert all the consequences which it deprecated as likely to ensue if the State officials were not restrained by complying with the terms of the Tennessee Act and availing itself of the remedy thereby afforded."

"There was no allegation of the inability on the part of the Express Company to pay the amount of the taxes claimed, nor any averments showing that the seizure and sale of the particular prop-

erty which might be levied on would subject it to loss, damage and inconvenience, which would be in their nature irremediable. The bill showed this Company to be doing a vast business, and it was an unreasonable inference that it would submit to the sale of its wagons and horses, or that such sale would work that kind of mischief, which justifies the interference of equity."

In the present case ths complainant was a road running through four counties, and its property is so valuable that the tax admitted to be due amounts to over $19,000. This it has paid without difficulty. It is certainly "an unreasonable inference" that it would allow its business to be broken up by the seizure of "its rolling stock, engines and cars," and "its franchises and charter imperilled," to escape the payment of an additional tax of $3,592.66.

Everyone knows that these consequences will not follow if the collection of the disputed tax is not enjoined.

In *Allen vs. Balt. and Ohio R. R.*, 114 U. S., admissions were made that irreparable injury of this sort would result if the property of the complainant was levied on.

"This admission made a case of irreparable injury." *Shelton vs. Platt.*

In this case no such admission has been made, and the facts stated do not sustain the allegation.

CLOUD UPON TITLE.

As to the cloud upon the complainant's title, it seems sufficient to say that it has been created by complainant's act in refusing to avail itself of the remedy which the State law provides. The little risk, if any, which it runs, is too small in comparison with the evil of enjoining the collection of the public revenue.

Green vs. Mumford, 5 R. I., 472.
Loud vs. Charleston, 99 Mass., 208.

The bill shows, f. 12, that the company owns rolling stock and other personal property, and it is only when sufficient personal property cannot be found that real estate can be distrained and sold. The danger or inconvenience of the alleged lien is purely imaginary.

MULTIPLICITY OF SUITS.

We submit that the bill cannot be sustained on this ground, because the complainant has no cause of action whatever against any one.

The defendants could not have been sued either in detenue or trespass if they had actually levied on the prop-

erty of the complainant. The assessment made by the Board of Equalization was on its face regular and in accordance with a constitutional law, and so was every subsequent step in the proceedings.

It is perfectly well settled that an officer whose duties are ministerial and who executes process which comes to him as a ministerial officer from other officers whose action he has no authority to revise or review, will be protected from executing it even though in fact it was issued without authority of law.

Cooley on Taxation, 797.
Statsman Co. vs. Wallace, 142 U. S. 309.

The only action the complainant could have brought was an action to recover back the money paid under protest—and the right to bring this action it has lost by its failure to comply with the conditions imposed by the act.

If the complainant had paid all the tax claimed, he would have had a cause of action against each Treasurer for the illegal part, if any, and he might perhaps then to avoid multiplicity of suits have invoked the aid of a Court of Equity and have had the whole matter tried in one suit.

But the complainant declined to avail itself of this remedy, and having lost all right of action, now asks this Court to restrain the State officers in collecting the public revenue, to prevent the necessity for numerous suits, not one of which has he a legal right to bring.

"As a fundamental proposition, it is plain that prevention of a multiplicity of suits is not considered by itself alone an independent source or occasion of jurisdiction, in such sense that it can create a cause of action where none at all otherwise existed. In other words a Court of Equity cannot exercise its jurisdiction for the purpose of preventing a multiplicity of suits in cases where the plaintiff invoking such jurisdiction has not any prior existing cause of action."
1 Pomeroy, E. J., 250.

"The Government of the United States has provided both in the customs and internal revenue, a complete system of corrective justice in regard to all taxes imposed by the general government which in both branches are founded upon the idea of appeals within the executive departments. If the party aggrieved does not obtain satisfaction in this mode, there are provisions for recovering the tax after it has been paid. *But there is no place in this system for application to a Court of justice until after the money is paid*"
State R. R. Tax Cases, 92 U. S., 613.

ON THE MERITS.

It will be observed that the bill does not charge that the laws of South Carolina, regulating the assessment and taxation of property, violated either the State or Federal Constitution.

In point of fact they do not. A faithful execution of the different provisions of the statutes regulating this subject would place upon the duplicate for taxation all the taxable property of the State, real and personal, whether belonging to corporations or natural persons, according to its true value in money, and the equality required by the constitution of the State and of the United States has no other test.

Not only has the Legislature enacted laws intended to secure equality, it has provided a complete system of remedial justice, which gives to every citizen a perfect and speedy remedy for the correction of errors.

All this is not denied by the complainants. The theory on which the bill rests is, that though the State constitution may be in perfect accord with the constitution of the United States, and the State statutes entirely constitutional, still the State may be successfully charged with denying to its citizens the equal protection of its laws, because the Board of Equalization, charged with assessing railroad property, and required by the law to assess it at its full value, have refused to adopt an illegal rule of valuation concurred in and adopted by the County Auditors and County Boards of Assessment throughout the State, by which real and personal property (except money) was unlawfully assessed at about fifty or sixty per cent. of its real value, (folio 6.)

Upon this contention we observe, in the first place, that the Board has no supervisory power or control over other Boards, and in the next, that its duty as prescribed by the law was to equalize the value of the property of railroad companies as returned by "increasing the value of the roads and property of such companies as shall have been, in their judgment, returned at too low a valuation, and diminishing the values of such as may have been returned at too high a valuation."

It is clear that there is nothing in this statute which author-

izes the Board to assess railroad property upon any other basis than its real value.

They could not, therefore without a violation of their official oaths, have acted otherwise than they did.

The case of

Williams vs. State Board of Assessors, 42 A. and E. R. R., Cases 275,

is in point here. Referring to the cases of R. R. *vs.* State Board of Assessors, 49 N. J., page 1, the Court held that the State Board of Assessors, in their valuation of property, are not necessarily to be governed by the valuations made by local Assessors in the same district. The State Board of Assessors are to take the true value as a standard, and not discount their estimation of the true value because of the custom of local Assessors to value for taxation at less than its true value. The Court held to be unconstitutional an Act of the Legislature which attempted to authorize and require the State Board of Assessors to adopt in the case of railroad property the relatively lower valuations of the local Assessors as to other property in lieu of the true value standard required by the Constitution.

In the case at bar, could the State Board have adopted a rule of valuation which the Legislature was powerless to authorize?

"The general rule is well established that where a tax is levied on property not specifically, but according to its value to be ascertained by assessors to be appointed for that purpose, upon such evidence as they may obtain, the officers estimating the value of property within their jurisdiction act judicially, and their judgments are final and conclusive and cannot be inquired into collaterally, or assailed except upon the ground of fraud."

Hagar vs. Reclamation, &c., 111 U. S., 710.

Cummings vs. National Bank, 101 U. S., 133, while an *apparent* exception to this rule is really an illustration of it. In that case it was held, that though the tax law itself might

be unobjectionable, if the officers who are appointed to make assessments combine together and establish a rule or principle of valuation the necessary result of which is to tax one species of property higher than others, the Court will also give relief.

But that case is clearly distinguishable from the case at bar.

In Cummings vs. The Bank, the primary assessors for real estate are district assessors in the county, and ward assessors in the large cities: for personal property (other than bank shares and railroad property) there are likewise district and ward assessors; for banks the Auditor is primary assessor; and the evidence shows, as found by the Court, that the assessors of real property, the assessors of personal property and the Auditor of the County concurred in establishing a rule of valuation by which real estate and personal property, except money, was assessed at one-third of its actual value, money at six-tenths of its value, and the assessment of bank shares, as returned by the State Board of Equalization for taxation to the Auditor, was fully equal to their true value in money. Furthermore, that the Auditor had held conferences with several other County Auditors, and the rule by which property was valued in Lucas County, the County in question, was the result of this conference, and was to be applied in all the Counties.

Therefore the assessment of bank shares was tinctured in its inception with being part and parcel of a fraudulent conspiracy or combination, whereby the constitution and laws were to be violated and unjust discriminations made.

The Court upon this state of facts held that "Equity might properly interfere to restrain the operation of this unconstitutional exercise of power;" that "the rule must be held void, and the injustice produced under it must be remedied so far as the judicial power can give remedy;" and gave the remedy by in effect reducing the assessment. All through the case the assessment is regarded as an illegal assessment.

In the Bill in this case no fraud or conspiracy or other unfaithfulness has been charged against the Board of Equalization, unless its refusal to be bound by the alleged

fraudulent action of other assessing Boards can be regarded as a fraud. The Bill alleges, it is true, that in appraising the property of the railroad companies at its full value, the Board intended to burden unjustly, this class of property holders, and to shield and protect others, but this is merely an inference drawn by the pleader and is not admitted by the demurrer. (142 U. S., 544.)

The reasonable inference from the facts stated is that the Board in following the only rule prescribed by the Constitution and Statutes intended to do their duty, and so far as it was within their power, to act fairly and honestly alike towards the State and taxpayer.

It will be observed that the Bill does not charge even the County Boards with concerted action in establishing the rule to assess real and personal property below its value. The charge is, that they concurred in establishing a rule of valuation by which real and persanal property was assessed at about fifty or sixty per cent. of its values. Concurrent action may be fortuitous. The very indefiniteness of the language used seems to point to the conclusion that there was no established rule or principle of valuation, but that the various assessing Boards acted independently, with the result that real and personal property, throughout the State, was assessed at rates varying between fifty and sixty per cent. of its value. If it be possible that such a thing could have occurred through mistake or error of judgment, the Court is bound to say that such was the case, and such a thing is certainly possible.

"The most complete system which can be devised, must, when we consider the immense variety of subjects which it necessarily embraces be imperfect. And when we come to its application to the property of all the citizens, and of those who are not citizens in all the localities of the State, the application being made by men, whose judgment and opinions must vary, as they are affected by all the circumstances brought to bear upon each individual, the result must inevitably partake largely of the imperfection of human nature, and of the evidence on which human judgment is founded." (92 U. S, 612.)

The Bill itself shows that the charge that complainants

property is assessed at its full value is untrue. It alleges that it returned its property at about sixty to sixty-five per cent. of its value. It also alleges that the Board of Equalization raised the assessment of complainants property from $14,000 a mile as returned, to $17,000 a mile, say 20 per cent. and at the same time raised the assessed value of the depots from $193,260 as returned, to $197,000, say 2 per cent. It is clear that the Board, according to the standard, furnished by complainant, has not assessed its property at more than 80-85 per cent. of its value, and its depots at more than 65-67 per cent. Again, in the county of Charleston the difference between the amount admitted to be due, $2,297, and the amount claimed is only $177.67, and the difference varies in each county, showing that no arbitrary rule was adopted.

The entire tax imposed was $21,937 the amount admitted to be due $18,346 a difference of only 15 per cent. between the company and the assessing Board, and its property has therefore not been assessed at over 75-80 per cent. of its value.

In Wagoner vs. Loomis, 37 Ohio State Reports, 571, the Court held: "That inequalities in the valuations, made under a valid law, of property for taxation do not constitute grounds for enjoining the tax in the absence of fraudulent discriminations by the agents and officers charged by the law with the duty of making such valuations, and that even in such case equity will not relieve a taxpayer whose property is not assessed in a greater amount than would have been imposed upon it in case all the taxable property of the State had in fact been assessed by a uniform rule, and according to its true value in money, and that a petition for injunction, stating that petitioners' property was valued at only 80 per cent. of its true value in money, while other property in the county was valued at only 40 per cent. of its value, did not state facts sufficient to sustain a bill for injunction.

It is clear that in Cummings vs. the Bank the *assessment* of the bank shares was regarded as a fraudulent assessment. The assessment was first made by the Auditor who was

not acting in accord with the Constitution, nor the Statute law of the State, but was acting with other assessors by a rule established by them which violated both the law and the Constitution. Hence all the assessments made under the operation of that rule were illegal, because they were not made under the law at all, but under the operation of an unjust rule which had been illegally adopted in the place of the law. The assessment on bank stock being thus illegal in its inception, the action of the State Board of Equalization based upon this illegal assessment did not cure the illegality. It "only increased the glaring inequality arising from the valuation of the county boards."

If the Auditor who had to assess the bank shares had refused to agree to the rule whereby real estate was assessed at only one-third of its real value; it might have acted as an important factor in preventing the real estate board from adopting such rule. At all events, he did agree to it, and this illegal concurrence affected with illegality the matter within his own jurisdiction.

In the case now before the Court, the assessment is not illegal, tested by the Constitution; it is not illegal, tested by the State law; it is not illegal, tested by any illegal rule under the operation of which it was assessed, for it does not appear that the assessors agreed to and became parties to any such rule.

If this assessment, then, is legal, and taxpayers are injured because other assessments are illegal, it is not easy to conceive of any principle upon which any remedy they may have can be directed against the legal assessment. In Cummings vs. The Bank, the assessment being illegal, the remedy could be directed against that, and the amount of that could be changed in order to give the proper relief. In this case the assessment being legal, it must necessarily stand. If complainants have been injured by illegal assessment of other property, the remedies proper to have those illegalities corrected are, it is submitted, the remedies appropriate to their aid.

There is another distinction between the Cummings case and the present, in this:

There the bank, a national bank, could go ordinarily into the United States Courts, and in that case the question could be considered whether or not the assessment was illegal, tried exclusively by State law.

Here there can be no pretence for jurisdiction unless the Constitution of the United States has been violated; and the particular provision thereof that is claimed to have been violated is that portion of Article XIV, that no State "shall deny to any person within its jurisdiction the equal protection of the laws." In the Cummings case the State law allowed an injunction to be granted. In this case the State law prohibits it.

If the case made here means anything, it asks that complainants have, not the equal protection of the laws, but the equal benefit of a gross violation of the laws in that their property should have the same low, and false assessment, as other property clearly illegally assessed.

The constitution and laws of this State, taken together, require not only uniformity but assessment at *actual* value. The Constitution of South Carolina is peculiarly explicit in requiring assessment of property for taxation at ACTUAL value, see Article 11, Section 33, supra.

In South Carolina taxes are to paid, not merely "according to value," or "in proportion to value" as required in most of the Constitution of other States, (under which uniformity might be achieved by an assessment uniformly made at less than actual vslue,) but "upon the actual value."

Complete equality under the laws demand that all classes of property should be assessed with uniformity and at *actual* value so as to preserve both these requirements. If uniformity alone is obtained upon assessments at *less* than *actual* value, then it is true an equality of a certain kind is attained, but not the equality required by the Constitution and laws of the State at the expense of a valid constitutional law.

This is not the equal protection of the laws; it is an equal protection, but it is an equal protection in the operation of

an illegal rule which has been made to take the place of the law.

A complainant may have the equal protection of all the laws, without subverting any of them, and if this can be done, it ought to be done.

By bringing the assessed property up to the proper plane of 100 per cent., this can be accomplished; and so if it be held that the State by the illegal action of any of the assessors has violated this provision of the Constitution of tne United States, it might be that the United States Court would have jurisdiction on this ground to compel the raising of the reduced assessments, or if there were an Act of Congress, to punish the assessors violating the law, and if this cannot be done it shows that the Court cannot apply the remedy until appropriate legislation, but in this case to fulfil merely one feature of the law is necessary to violate another, and the effect will be not to equally protect under the law, but to give all persons the benefit of action acknowledged to be illegal. The remedy is to rise to the plane of the law, not to sink to the level of the illegal rule.

If there were discriminations against colored persons on juries, the remedy would be not to exclude also all white persons from juries, but to enforce the law *against* the exclusion of colored persons.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No. 1206.

GEORGE H. WALTER, Treasurer of Charleston County; HUGH FERGUSON, Sheriff of Charleston County, *et. al.*, APPELLANTS.

vs.

THE NORTH-EASTERN RAILROAD COMPANY, APPELLEE.

Appeal from the Circuit Court of the United States for the District of South Carolina.

ARGUMENT FOR APPELLEE.

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CHARLESTON, S. C.
WALKER, EVANS & COGSWELL CO., PRINTERS
Nos. 3 and 5 Broad and 117 East Bay Streets.
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I.

STATEMENT OF CASE.

The complainant appellee filed a Bill in Equity in the United States Circuit Court for the District of South Carolina to enjoin the seizure and sale of its property under certain tax executions.

The defendant demurred to the bill. On hearing on Bill and Demurrer the Court decreed in favor of complainant and issued the injunction. This appeal is from that Decree. The demurrer admits all the facts stated in the bill which are as follows :—

Real estate in South Carolina is assessed for taxation once
4 in every five years. No change is made in the interval. Personal property is assessed every year. All real estate is assessed for taxation at from fifty to sixty per cent. of its actual value. Personal property at the same. This rate of assessment has become a uniform rule and is accepted and acted upon by the assessing officers and boards of the State.

Railroads are assessed for taxation by a special board called the State Board of Equalization for railroads. This assessment of railroads for taxation is made annually.

Prior to the year 1891 the State Board of Equalization for
5 railroads accepted and acted on this uniform rule of assessment.

In the year 1891 the State Board of Equalization for railroads departed from this rule. No change had been made or could be made in the assessment of real property in the State. No change had been made in the rate of assessing personalty. Nevertheless the State Board of Equalization at its meeting in 1891, abandoned the rule theretofore accepted and assessed railroad property at a rate exceeding its actual value and in some cases double and treble the previous rate.
6 The assessment of the property of the appellee, the North-Eastern Railroad Company, was raised from $14,000 to $17,000 per mile, and its personalty from $193,260 to $197,000.

At the time this was done the State Board of Equalization for railroads were well aware of the uniform rule of assessment adopted throughout the State, but adopted a different rule with regard to railroad property in order to make that class of property holders bear a larger share of the burden of taxation, and to shield and lesson the burden on other
7 more favored classes of property holders.

Thereupon the appellee in common with the other rail-

roads in the State, tendered in payment of its taxes, the amount due under the levy estimated on the value of its property as theretofore assessed, under the rule prevailing in the State, and stated in the sworn return, and brought the present bill to enjoin the taking possession of and selling its property under a tax execution to collect the excess.

II.

POINTS OF LAW.

The errors assigned although numbered five, raise practically but four questions.

1. On the merits that the bill states no ground of equity.

2. On the jurisdiction that no Federal question is involved.

3. On the jurisdiction that there is a speedy and adequate remedy at law.

4. On the jurisdiction that the amount involved is less than $2,000.

These questions will be taken up in the order enumerated.

I.

That on the merits the prayer of the Bill of Complaint should be granted.

The Statutes of South Carolina provide a comprehensive scheme of taxation. (*General Statutes of 1882, Title III, Chapter XL, Sections 164 to 320.*)

The initial proceeding in the assessment of all property is the same, viz:—the sworn return of the taxpayer.

A distinction is made after this first step between real and personal property. Real property is assessed for taxation once in five years. The value as then assessed remains un-

changed for five years when a re-assessment is had. (*Const. of S. C., Art. 9, Sect. 6.*)

Personal property is assessed annually. (*General Stats., Sect. 173.*) In the case of real estate the sworn returns of the taxpayers are subject first to the revision of a Tax-District or Township Board of assessment. (*Ibid, Sect. 253.*)

12 The assessments of this District or Township Board of assessors are again subject to the revision of a County Board of Equalization, (*Ibid, Sect., 254.*) and the County Board of Equalization is in like manner subject to the revision of the State Board of Equalization. (*Ibid, Sect., 258.*)

Personal property is assessed annually. The first step is the sworn return of the taxpayer. This is subject to the revision of the County Auditor, then the County Board of Equalization, and in certain cases to that of the Comptroller General.

Special regulations have been made with regard to different classes of property, viz: Mines, manufactures, banks, rail-
13 roads, express, telegraph and insurance companies. (*Ibid Sections 117–218.*) In the case of railroads an assessment is had annually. The railroad company makes annually a sworn return both to the County Auditor and to the Comptroller General of the State. (*Ibid Section 180.*) These returns are by the Comptroller General subjected to the revision of a Special Board of Equalization designated the State Board of Equalization for Railroads. (*Ibid Section 186.*)

The property of any railroad is valued as a whole, *i. e.*, the values of its tracks or right of way and personal property
14 are added together, and this aggregate is apportioned per mile of main track. The railroad is charged in each County on the tax lists with such a proportion of this aggregate value as the mileage in that County bears to the whole, to which is added the values of depots, depot grounds and other real estate in such County. (*Ibid Section 182.*)

Notwithstanding such special regulations in the case of railroads, and others in the case of banks, etc., the whole scheme of taxation contemplates an assessment based in the first instance upon the sworn returns of the taxpayers, sub-
15 ject to revision by some officer or board of officers. The sworn return constitutes the assessment on which the tax

is calculated, unless it is lawfully changed by the Revising Board or Officers.

This appel ee duly made the sworn return required by the Act. (*Record, p. 3.*)

All taxpayers and the revising officers and boards for all species and categories of property have for years, in South Carolina, adopted a rule of assessment. This was to assess all property at from fifty to sixty per cent. of its real value. 16
(*Record, p. 3 fol 5.*) This rule being adopted as to real property it necessarily operated as to other kinds of property, for the valuation of real property being fixed for periods of five years, and the constitution requiring all values for taxation to be ascertained by an uniform rule, the same rule or method of ascertaining values for taxation had to be applied to other kinds of property assessed in the interim. Such being the case, all real estate being assessed at from fifty to sixty per cent. of its value, the same rule being followed for personal property generally, the Special Board of 17
Equalization for railroad property suddenly abandoned this rule so far as railroad property was concerned, and assessed that property by another and a different rule, the effect of which was to excessively raise the assessment of a railroad property, the assessment of other real and personal property remaining unchanged, and then to largely increase the proportionate share of the public burden of taxation borne by railway companies.

The position of the appellants on the merits is that this action of the Special State Board of Equalization for rail- 18
ways is not a legal wrong remediable by a Court.

The constitutional provisions of the constitution of the State of South Carolina are as follows:

Article 1, Section 36.

"All property subject to taxation shall be taxed in proportion to "its value. Each individual of society has a right to be protected "in the enjoyment of life, liberty, and property, according to stand- "ing laws. He should, therefore, contribute his share to the ex- "pense of his protection, and give his personal service when neces- 19
"sary."

Article 9, Section 1:

"The General Assembly shall provide by law for a uniform and "equal rate of assessment and taxation, and shall prescribe such "regulations as shall secure a just valuation for taxation of all "property, real, personal, and possessory, except mines and mining "claims, the proceeds of which alone shall be taxed; and also ex- "cepting such property as may be exempted by law for municipal, "educational, literary, scientific, religious, or charitable purposes."

20

Article 9, Section 6:

"The General Assembly shall provide for the valuation and as- "sessment of all lands and the improvements thereon prior to the "assembling of the General Assembly of one thousand eight hun- "dred and seventy, and thereafter on every fifth year."

The action of the Special State Board of Equalization for railroads was in direct contravention of these constitutional provisions.

21

Cummings vs. National Bank.

The case of *Cummings v. National Bank*, 101 U. S., 153, is on all fours with the present case. It is *mutatis mutandis* the same case, and is absolutely conclusive.

There the constitution of Ohio provided that

"Laws shall be passed taxing by a uniform rule all monies, "credits, investments in bonds, stocks, joint stock companies, or "otherwise; and also all the real and personal property according to "its true value in money."

22

The Statutes of Ohio provided for separate State Boards of Equalization for real estate, railroads and banks. Throughout a large part of the State, the officers charged with the valuation of property for taxation, adopted a settled rule or system by which real estate was estimated at one-third of its true value and ordinary personal property about the same. The State Board of Equalization for Banks, increased the valuation of their shares to their full value.

The Merchants' National Bank of Toledo, brought its Bill
23 of Complaint against the Treasurer of Lucas County, praying an injunction against the tax wrongfully assessed on its

shares. This Court held that the action of the special State Board of Equalization for banks was unlawful and the collection of the tax upon the increased assessment should be enjoined. Say the Court :—

" The constitutions and the statutes of nearly all the States have
" enactments designed to compel uniformity of taxation and assess-
" ments at the actual value of all property liable to be taxed. The
" phrases, 'salable value,' 'actual value,' cash value,' and others used 24
"in the directions to assessing officers, all mean the same thing, and are
"designed to effect the same purpose. Burroughs Taxation, page 227.
" Section 99. But it is a matter of common observation that in the
" valuation of real estate this rule is habitually disregarded. And
" while it may be true that there has not been in other States such
" concerted action over a large district of country by the primary
" assessors in fixing the precise rates of departure from actual value,
" as is shown in this case, it is believed that the valuation of real
" estate for purposes of taxation rarely exceeds half of its cur-
" rent salable value. If we look for the reason for this common
" consent to substitute a custom for the positive rule of the statute,
" it will probably be found in the difficulty of subjecting personal
" property, and especially invested capital, to the inspection of the 25
" assessor and the grasp of the collector. The effort of the land
" owner, whose property lies open to view, which can be subjected
" to the lien of a tax not to be escaped by removal, or hiding, to pro-
" duce something like actual equality of burden by an under-valua-
" tion of his land, has led to this result. But whatever may be its
" cause, when it is recognized as the source of manifest injustice to a
" large class of property around which the Constitution of the State
" has thrown the protection of uniformity of taxation and equality
" of burden, the rule must be held void, and the injustice produced
" under it must be remedied so far as the judicial power can give
" remedy."

26

This decision, and the rule thereby laid down, has been followed in

Whitney National Bank vs. Parker, 41 Fed. Rep., 402, and *First National Bank vs. Lindsay*, 45 Fed. Rep., 619.

In *Andrews vs. King County*, 1 Washington State, 46, (23 Pacific Reporter, 409,) the Supreme Court of Washington held, that the action of an assessor in assessing mortgages at their full value and lands at one-fourth of their value was in violation of Sec. 1924, U. S., Revised Statutes, declaring 27
that all taxes shall be equal and uniform.

The Court say :

" The principles involved in this case were passed upon by the " Supreme Court of the United States, in the case of Cummings vs " Bank, 101 U. S , 153, which is a leading case, and must be regarded " as settling the law."

Practically the same principle was involved in the case of *Boyer vs. Boyer*, 113 U. S., 689. The State of Pennsylvania
28 had exempted from taxation for county purposes certain classes of moneyed capital, *i. e.*, railroad securities, mortgages, judgments, etc., but taxed shares in National Banks. This the Court held to be a discrimination in favor of other property against capital invested in National Bank shares, and in contravention of Section 5219 U. S., Revised Statutes."

The Court say, on page 701 :

" The exemption in favor of other moneyed capital appear to be "of such a substantial character in amount as to take the present. " case out of the operation of the rule that it is not absolute equality
29 " that is contemplated by the Act of Congress; a rule which rests " upon the ground that exact uniformity or equality of taxa- " tion cannot, in the nature of things, be expected or attained under " any system. But as substantial equality is attainable, and is re- " quired by the supreme law of the land, in respect of State taxation " of National Bank shares, when the inequality is so palpable as to " show that the discrimination against capital invested in such " shares is serious, the Courts have no discretion but to interfere."

Upon the principle settled by these adjudications, it follows that the action of the State Board of Equalization for Railroads in South Carolina in arbitrarily assessing the property of railroads at a much higher rate than fixed by the rule of
30 assessment for all other property was in contravention of the provisions of the Constitution of South Carolina, and such unlawful action will be annulled by the Courts.

The action of the State Board of Equalization for Railroads being unlawful, does it involve a Federal question?

II.

The Federal Question.

The position assumed by complainants is, that it does in-
31 volve a Federal question, inasmuch as such action is forbidden by the provisions of Section 1, of the Fourteenth

Amendment of the United States Constitution. In other words, it is claimed by the bill that the Constitution of South Carolina requires uniform and equal taxation; that the action of the State Board of Equalization for Railroads has violated that constitutional provision, and denied to one class of citizens its protection, whereas such denial is forbidden by the provisions of the Fourteenth Amendment.

It has been repeatedly decided that private corporations 32
are persons within the meaning of the amendment.

Charlotte & C. R. R. vs. Gibbes, 142 U. S., 386.

It is equally well settled, that the provision of the Fourteenth Amendment are not limited to Legislative action, but apply to Boards or officers to whom the State has delegated the power of action.

"The provisions of the Fourteenth Amendment of the Constitution
* * all have reference to State action exclusively, * * * * 33
"It is doubtless true that a State may act through different agen-
"cies, either by its Legislative, its executive, or its judicial authorities;
"and the prohibitions of the amendment extends to all action of the
"State denying equal protection of the laws, whether it be action by
"one of these agencies or by another."

Virginia vs. Rives, 100 U. S., 313.

"We have said the prohibitions of the Fourteenth Amendment are
" addressed to the States. "They are, No *State* shall make or enforce a
" law which shall abridge the privileges or immunities of citizens of
" the United States, * * * nor deny to any person within its 34
"jurisdiction the equal protection of the laws." They have reference
" to actions of the political body denominated a State, by whatever
" instruments or in whatever modes that action may be taken. A
" State acts by its legislative, its executive, or its judicial authorities.
" It can act in no other way. The constitutional provision, therefore,
" must mean that no agency of the State, or of the officers or agents
" by whom its powers are exerted, shall deny to any person within
" its jurisdiction the equal protection of the laws. Whoever, by
" virtue of public position under a State government, deprives
" another of property, life, or liberty, without due process of law, or
" denies or takes away the equal protection of the laws, violates the
" constitutional inhibition; and as he acts in the name and for the
" State, and is clothed with the State's power, his act is that of the 35
" State. This must be so, or the constitutional prohibition has no

"meaning. Then the State has clothed one of its agents with "power to annul or to evade it."

Ex-Parte Virginia, 100 U. S., p. 346.

The same view is approved in *Civil Rights Cases*, 109 U. S., 3.

"It nullifies and makes void all State legislation, and State action
36 "of every kind, which impairs the privileges and immunities of "citizens of the United States, or which injures them in life, liberty "or property without due process of law, or which denies to any of "them the equal protection of the laws."

Ibid p. 11.

"The prohibitions of the amendment are against laws and acts "done under State authority."

Ibid p. 13.

The amendment was intended to protect the citizens
37 against State action no matter how taken. If it was applied only to legislative acts then the Legislature by enlarging the powers of the executive or by delegating to fixed boards enlarged and controlling powers of discretion, might wholly defeat and nullify the entire purpose of the amendment.

That the State Board of Equalization for Railroads in South Carolina is invested with such powers as to constitute its action, that of the State scarcely requires argument. It is composed of the highest executive officers viz: The State Treasurer; the Secretary of State, the Comptroller General
38 and the Attorney General. They are given entire control over all railway assessments for taxation. Their assessments are final. They constitute both the first and the final board of assessment. No appeal lies from them. They are given complete control.

In the cases of the *State R. R. Tax Cases*, 92 U. S., 575, and *Kentucky Railroad Tax* Cases, 115 U. S., 321, similar cases were held to involve Federal questions.

The very issue made by the pleadings is that the act of the State Board of Equalization for Railroads was in contra-
39 vention of and forbidden by the term of the Fourteenth Amendment to the Constitution.

In the case of *Spencer vs. Merchant*, 125 U. S., 355, it is said that wherever in apt words the question is presented that an alleged wrong has been committed in violation of the constitutional provisions it necessarily involves a decision for or against the right claimed under such provisions and therefore presents a Federal question.

And in the case of *Charlotte & C. R. R. Co., vs. Gibbes*, 142 U. S., 386, where the question was as to the constitutionality of a special tax upon railroads in the State of South Carolina this Court upheld the tax on the ground that its proceeds were to be applied solely for railroad purposes and say,

"If the tax were levied to pay for services in no way connected "with the railroads, as, for instance, to pay the salary of the execu- "tive or judicial officers of the State, whilst railroad corporations "were at the same time subjected to taxation upon their property "equally with other corporations for such expenses, and other "corporations were not taxed for the salaries mentioned, there "would be just ground of complaint of unlawful discrimination "against the railroad corporations, and of their not receiving the "equal protection of the laws."

The very converse proposition here stated is now before the Court. It is sought by this method of unfair assessment to make the railroads pay more than their share of the general State taxation while at the same time paying the whole of the special railroad taxes. There is therefore just ground of complaint of unlawful discrimination against the railroad corporation and of their not receiving the equal protection of the laws.

Is there a plain and adequate remedy at law?

III.

The Legal Remedy.

The third question raised by the assignments is that the Court below; as a Court of Equity was without jurisdiction, because the complainants had a complete and adequate remedy at law.

The equitable jurisdiction is based on four grounds.

1. Irreparable injury.

2. Multiplicity of actions at law.

3. That the question of an unjust rule of valuation applied to a large class, is remediable only in a Court of Equity.

44 4. That the effect of the tax executions is to cast a cloud upon the title of the complainant.

The rule is established in such case by this Court in the following decisions:—

"It must appear that the enforcement of the tax would lead to "multiplicity of suits, or produce irreparable injury, or when the "property is real estate, throw a cloud upon the title of complainant, "before the aid of a Court of Equity can be invoked."

Dows vs. Chicago, 11 Wall, 108.

45 "It has been the settled law of the country for a great many "years, that an injunction bill to restrain the collection of a tax, on "the sole ground of the illegality of the tax, cannot be maintained. "There must be an allegation of fraud; that it creates a cloud upon "the title; that there is apprehension of a multiplicity of suits, or "some cause presenting a case of equity jurisdiction."

Hannewinkle vs. Georgetown, 15 Wall, 548.

Both these cases are cited and approved in *State R. R. Tax Cases*, 92 U. S., 575, and *Allen vs. Baltimore*, 114 U. S., 311.

46 The remedy at law given by the Statute of South Carolina is set out in Sections 268 and 269 of the General Statutes of South Carolina. The provisions of these sections in brief are that whenever any taxes are charged or sought to be collected against any person which he shall conceive to be illegal, he must pay all such taxes under protest, and then bring an action within thirty days thereafter against the County Treasurer to recover back the tax so illegally collected.

The cases of *Shelton vs. Platt*, 139 U. S., 591, and *Allen vs.* 47 *Pullman*, 139 U. S., 658, are relied on by appellants as sustaining the claim that a Court of Equity has no jurisdiction

wherever a statutory action is given of like character with that given by Statute in South Carolina to recover back illegal taxes paid.

This is a misapprehension of those cases.

They decide that an injunction will not restrain the collection of taxes on the sole ground of their unconstitutionality; that some other equitable ground of relief must exist. The only ground for equitable jurisdiction invoked in those cases 48
was that of *irreparable damage*, and it was held that the facts alleged in the one case and proven in the other, made out no grounds of irreparable damage. That the facts alleged or proven as constituting irreparable damage, did not constitute such damage in as much as the payment of the tax and suit to recover back would obviate them all.

No other ground of equitable cognizance was claimed in *Shelton vs. Platt*, and *Allen vs. Pullman*, than that, of irreparable damage. That failing, the jurisdiction fell.

The present case depends as well on the additional grounds 49
of a threatened cloud on the title and a multiplicity of actions. So far from *Shelton vs. Platt*, and *Allen vs. Pullman*, limiting or excluding these as grounds of equitable jurisdiction, they expressly recognize and approve them.

The equitable jurisdiction in the present case being pitched upon the gronnds of irreparable injury, multiplicity of actions and a cloud on title; let us analyze the allegations of the bill and the provisions of the law to see if the bill is sustainable.

50

Multiplicity of Suits.

A "*multiplicity of suits*" exist wherever the principle involved is the same but to obtain its practical application in its entirety at law a number of separate actions would have to be brought either by one party against several others or by several others against one. In either alternative there exists such a multiplicity of suits, that can be equally well settled in one, as gives to a Court of Equity jurisdiction for such purposes.

In the present case the complainant is the owner of 51
property in four different counties; under the Statutes it

would have to pay its taxes in each of these counties and then bring four different contemporaneous actions at law one in each county to recover back the amount paid. Each action would involve precisely the same question. Not an iota of difference. But if the complainant lost the cases it would be mulcted not in the costs of one but of four actions to establish the same result that one might effectually establish. More
52 than that, if the complainant herein won the cases at law he would still be mulcted in the costs of four cases for by the Statute even if the taxpayer is successful the State is not to pay costs.

The unlawful act complained of, is one act. It is the act of one body. The County Treasurer in charging the tax in the different counties and the Sheriff's in levying the tax executions are simply carrying into effect the unlawful mandate of the State Board of Equalization.

The mandate is one, its application is several, but the
53 same rules which would restrain its application in one case would restrain it in all. It is only reasonable and proper therefore that the whole matter of the constitutionality should be settled and adjudicated in one proceeding.

The subject of the equitable definition of a "multiplicity of actions" is fully treated by Mr. Pomeroy in his work on Equity Juris-prudence, Vol 1, Sections 259, 266 265 and 268, especially at foot of page 293. After a full discussion of the cases he enunciates the conclusion that a "multiplicity" of suits so as to give equity jurisdiction occurs:

54 *a.* Wherever a right exists on behalf of one against several arising out of the same state of facts and depending on the same questions but that the party having the right would be put to bringing several and independent actions of law to obtain his rights.

b. Wherever a right exist on behalf of many against one arising out of the same state of facts and depending on the same questions but that the party against whom the right is claimed will be subjected to several and independent
55 actions of law against him to settle the questions of each ones right.

c. This "multiplicity" so as to give equity cognizance exists although there is no "common title" nor "community of rights "or of "interest in the subject matter" among the separate individuals. It is enough if the separate claims arose by means of the same unauthorized unlawful or illegal act or if there be a community of interest in the questions at issue and the remedy.

Each separate and individual Treasurer who would have 56
to be sued, and each separate and individual Sheriff whose trespass has to be restrained, acts by virtue of a common mandate emanating from the same authority whose legality depends on the same questions.

The Bill is brought against the individuals who, as Treasurers and Sheriffs, are seeking under one common, unlawful mandate to invade and trespass upon the complainants' right of property.

Pennoyer vs. McConnaughy, 140 U. S., 1. 57

It is the case of a Bill brought against a number of trespassers who base their claims upon a common source of title, or similar warrant, to have the whole matter adjudicated at once and for all in one proceeding.

Such a bill has been repeatedly held well brought.

DeForest vs. Thompson, 40 Fed. Rep., 375.
McConnaughy vs. Pennoyer, 43 Fed Rep., 339. 58
Osborn vs. Wisconsin Cent. R. R., 43 Fed. Rep., 824.
Corinth vs. Locke, 20 Atlantic Rep., 809.

Special Doctrine Affecting Suits to Correct Unconstitutional Assessments.

Independent, however, of these principles, equitable jurisdiction in this case follows from the fact that the unlawful act complained of affects a large class of corporations as well as the complainant whose assertion of these rights by the 59
statutory actions would lead to an indefinite and endless

number of actions. This rule is a necessary corollary of the rule as to a multiplicity of suits.

In the case of Cummings vs. National Bank, 101 U. S., 153, it was there objected that "there was a plain, adequate "and complete remedy by paying the money under protest "and suing at law to recover it back."

60 See p. 156.

To this the Court answered, that the statute of the State also expressly declared that suits may be brought to enjoin the illegal levy or collection of taxes and assessments; and proceeded to say:

"Independently of this Statute, however, we are of the opinion that "when a rule or system of valuation is adopted by those whose duty "it is to make the assessment, which is designed to operate unequally "and to violate a fundamental principle of the Constitution, and when "this rule is applied, not solely to one individual, but to a large class
61 "of individuals or corporations, that equity may properly interfere to "restrain the operation of this unconstitutional exercise of power. "That is precisely the case made by this bill, and if supported by the "testimony, relief ought to be given."

This language is repeated and affirmed in *Stanley vs. Supervisors*, 121 U. S., 535, where, on page 550, this Court says:

"When the over-valuation of property has arisen from the adoption "of a rule of appraisement which conflicts with a constitutional or "statutory direction, and operates unequally, not merely on a single "individual, but on a large class of individuals or corporations, a
62 "party aggrieved may resort to a Court of Equity to restrain the ex- "action of the excess, upon payment or tender of what is admitted to "be due."

The reason of the rule is clear, and clearly illustrated in *Stanley vs. Supervisors*. In an action at law to recover back taxes illegally paid there must be a certain definite fixed amount. The objection must be to the whole tax. The very nature of an action at law requires it.

"It is only where the assessment is wholly void, or void with re-
63 "spect to separable portions of the property, the amount collected on "which is ascertainable, or where the assessment has been set aside as

"invalid that an action at law will lie for the taxes paid, or for a portion "thereof. Over-valuation of property is not a ground of action at law "for the excess of taxes paid beyond what should have been levied "upon a just valuation."

Stanley vs. Supervisors, 121 U. S., p. 549.

In other words, a Court of law is not the proper tribunal to determine the question of an over-valuation under an illegal rule of assessment covering a large class of property. 64
An action at law must be for a specific sum arising out of a specific issue.

The machinery of a Court of law is not adapted to considering the question of the relative values of large classes of property and the adjustment of proportionate valuations, and the determination of a true rule of assessment with regard, not to one specific piece of property but to large classes of property in different places. This is exactly what the machinery of a Court of Equity is intended for.

65

The action at law exists only where, in the language of Mr. Justice Fields, *Dows vs. Chicago, 11 Wall., 112*, the complainant would not

"Have been compelled to resort to a multiplicity of suits to de-"termine his rights. His entire claim might have been embraced "in a single action."

The rule of procedure here laid down has been followed in

Whitney Natl. Bank v. Parker, 41 Fed. Rep. 402. 66
California & O. Land Co. v. Gowen, 48 Fed. Rep. 771.

The circumstances of the present case before the Court exactly square with these conditions.

Here a Board to whom the State has given almost absolute powers of assessment have adopted a rule of appraisement which conflicts with a constitutional direction and operates unequally not merely on a single individual, but on a large class of corporations.

This appraisement affects property of all those corpora- 67
tions situated in every county in the State. It would neces-

sitate actions at law (if such were proper) against individuals in every county of the State. In lieu of that the complainant has first tendered the amount admitted to be due by its sworn return, and then filed a bill asking leave of the Court to pay it into Court, and for an injunction against the seizure and sale of its property to collect the excess.

68 "If the proper officer refuses to receive a part of the tax, it must be tendered and tendered without the condition annexed of a receipt in full for all the taxes assessed."

State R. R. Tax Cases, 92 U. S., 617.

"A party aggrieved may resort to a Court of Equity to restrain 'the exaction of the excess upon payment or tender of what is ad-"mitted to be due."

Stanley v Supervisors, 121 U. S., 538.

(*Note.*—Since filing the bill the amount tendered before
69 the filing of the bill, and admitted due has by order of Court been paid over to the State.)

All these conditions have been strictly followed. The Treasurers and the Sheriffs of the several counties are so many trespassers, all acting under the same illegal warrant, and therefore properly joined in one suit."

McConnaughy v. Pennoyer, 43 Fed. Rep., 339.

Cloud on Title.

70

There is, however, still another and conclusive ground of equity jurisdiction in the present case. It is to prevent the creation and continuance of a cloud upon the title of the complainant.

The Statutes of South Carolina provide by a curious logical inconsistency that whilst all real property and fixtures of railroads should for the purpose of assessment of railroads be considered and treated as personal property, yet for the purposes of the collection of taxes and their lien be consid-
71 ered and treated as real property. The lien for taxes, therefore, exists on all the right of way and real property of a

The Statutory remedy given by the Statute of South Carolina is in its very terms inadequate and different from that upheld in *Tennessee vs. Sneed*, 96 U. S., 69, and *Shelton vs. Platt*, 139 U. S., 597.

The Tennessee Statute allows an action to recover the tax back to be brought in "any Court having jurisdiction of the amount and parties."

The South Carolina Statute restricts the right to bring an action to the State Court of Common Pleas for the County—thus arbitrarily excluding, not only Equity, but all Federal jurisdiction as well. As the judgment in any such action is not against the County Treasurer personally, but to be paid by the State, the State would decline to acknowledge or pay the judgment recovered in any Court but the State Court of Common Pleas, as a judgment recovered in a forum, in which it had not consented to be sued—thus practically excluding from a party the right to have the constitutionality of a tax depending on a Federal question tried in a Federal Court.

(1011, Sett., 1399.)

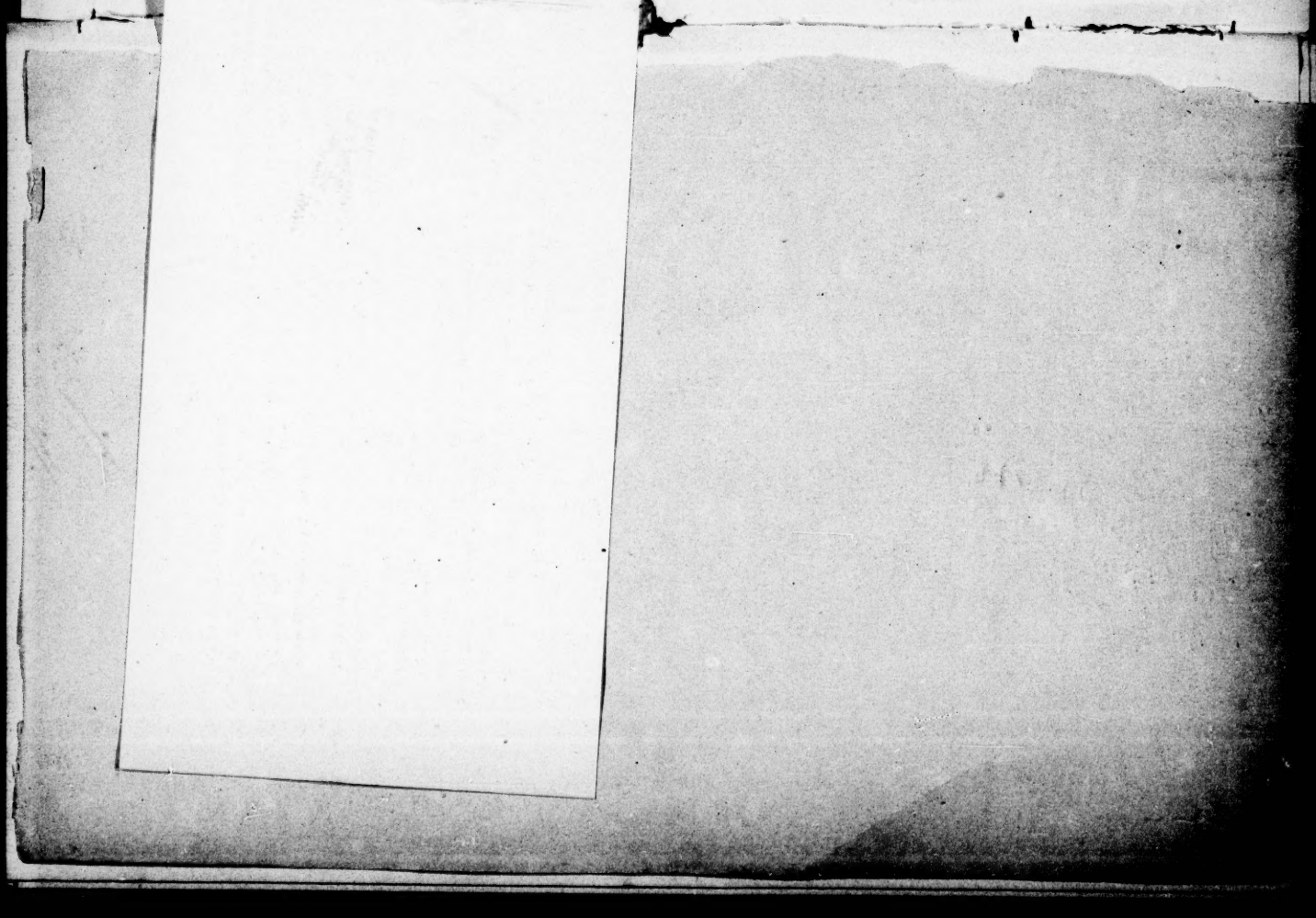
Strusburgh vs. Mayor, 87 N. Y., 452.

These conditions all apply in the case before this Court.

The appraisement made and assessment ordered by the State Board of Equalization for railroads is apparently valid. It is an assessment made in pursuance of statutory duties and apparently in exercise of statutory powers. It is invalid for matter *dehors* the record. This invalidity depends upon the fact admitted by pleadings, but resting on evidence *dehors* 74
the record that this Board has exceeded its powers and abused its privileges. An inspection of the record would not disclose this fact nor the invalidity of the tax.

In *Lyon vs. Alley*, 130 U. S., 177, these are the very conditions held by this Court to justify a Bill to remove the cloud and a decree in pursuance of the same, and this Court affirms and approves the following language in *Union Pacific Ry. Co., vs. Cheyenne*, 113 U. S., 516–525.

"It cannot be denied that Bills in Equity to restrain the collec-
"tion of taxes illegally imposed have frequently been sustained. 75
"But it is well settled that there ought to be some equitable ground



railway in like manner as on the real property of any other taxpayer.

Taxes in South Carolina are a first lien upon the property taxed and every part thereof. In the present case the taxes represented by the tax executions for the illegal excess are liens upon the complainants' property and every part thereof. This lien is a continuing cloud or incumbrance upon the entire property until by some adjudication the tax executions 72
and other record entries representing this charge are held and declared illegal.

A Bill to remove a cloud on title lies in general wherever there is a title, charge or incumbrance upon the property, apparently valid but in fact invalid. It is also held to lie as well to anticipate and prevent as to remove such cloud. (*Pom. Eq. Juris, Sect., 1345.*)

It has by the great weight of authority been held to lie in the case of invalid assessments of property for taxation. 73
(*Ibid, Sect., 1399.*)

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"It cannot be denied that Bills in Equity to restrain the collec-
"tion of taxes illegally imposed have frequently been sustained. 75
"But it is well settled that there ought to be some equitable ground

"for relief besides the mere illegality of the tax; for it must be "presumed that the law furnishes a remedy for illegal taxation. It "often happens, however, that the case is such that the person "illegally taxed would suffer irremediable damage, or be subject to "vexatious litigation, if he were compelled to resort to his legal "remedy alone. For example, if the legal remedy consisted only of "an action to recover back the money after it had been collected by "distress and sale of the taxpayers' lands, the loss of his freehold by "means of a tax sale would be a mischief hard to be remedied. Even
76 "the cloud cast upon his title by a tax under which such a sale "could be made, would be a grievance which would entitle him to "go into a Court of Equity for relief."

And both these cases are followed in the late case of *Gage vs. Kaufman*, 133 U. S., 471.

"And in such case of damage, *either existing or apprehended*, equity "will interpose for relief, even during the progress of the proceed- "ings before the sale."

77 *Lyon vs. Alley*, 130 U. S., 187.

IV.

That the sum of $2,000 is not involved in the dispute.

The Bill of Complaint shows that the complainant has property in four several counties. The difference in dispute between the amount admitted legally due and the illegal assessment in no one county equal $2,000, in the aggregate
78 it far exceeds it. The appellants deny that the amounts in the several counties can be joined so as to aggregate over $2,000. The appellants claim that each County Treasurer and each County Sheriff is a separate and independent trespasser or *tort feasor*, and cannot be joined as co-defendant with the others.

This is a misapprehension. They are not several but joint *tort feasors* or trespassers. The illegal act complained of is the act of one body, i. e., the State Board of Equalization for railroads. The warrants under which the several defendants
79 assume to act, all emanate from the same action of the same body.

They are simply the instruments of the State to carry out one illegal act. No one County Treasurer or Sheriff acts independently for the assertion of any separate individual right. He is acting in conjunction with every other County Treasurer and Sheriff to assert the single claim of one party, the State of South Carolina upon the property of the complainant in the several counties, under the directions of one body, the State Board of Equalization. 80

An examination of the Statutes of South Carolina will show that the claim in dispute, to wit, the excess of the assessment on the whole Road is, in fact, one claim, and not divided into several distinct claims because it is collectible in different counties.

To state the proposition a little more at large, the entire tax is due to the State. For the purpose of collecting this tax, the State divides its territory, as convenience requires, into districts called counties, and in each of these counties it has an employee called the County Treasurer, who collects 81 the tax on behalf of the State, but who is the mere conduit through which the tax levied is conveyed into the coffers of the State.

Section 170, of the General Statutes of South Carolina declares all taxes to be debts payable to the State. That the County Treasurers are not independently engaged in collecting taxes due to them severally as individuals, but are agents to collect a debt due to the State, is established by Section 282, of the General Statutes, which empowers the County Treasurer of each county in which the taxes are not paid by 82 a taxpayer therein, to forward to the County Treasurer of any other county in which such taxpayer may reside, or have property, a certificate of the fact that the taxes are unpaid in his county, upon receipt of which it is the duty of the Treasurer of such other county to issue his execution and collect the taxes in like manner as if they had originally been charged therein.

So as to the Sheriffs of the several counties. In lieu of each Sheriff acting independently upon the tax executions due in his county alone, by the terms of an Act entitled, "An 83 Act to amend an Act entitled an Act in relation to Forfeited

Lands, Delinquent Lands and Collection of Taxes, approved 24th December, 1888." (*See Statutes at Large of South Carolina*. Volume 20, page 53;) the Sheriffs of the several counties are each and all required in levying tax warrants on tax executions placed in their hands by the County Treasurers and collecting taxes thereon, to be subject to the direction, and under the control of the Comptroller General of the
84 State, who is, for the purposes of enforcing such executions, invested with all the rights and privileges of a plaintiff in execution, and to whom as such single plaintiff the Sheriffs are all jointly and severally accountable.

The whole statutory scheme of tax collection, therefore, shows, that the tax levied upon any taxpayer is to be regarded as a unit, one debt payable to the State, and collectable as convenience may dictate, according to the territorial districts in which the taxable property may lie.

Where there are a large number of trespassers upon the
85 property of one individual acting either in execution of a common purpose or basing their several claims upon the same state of facts or same questions of law, it is well settled that they can be all joined as defendants in one proceeding to settle the question and for an injunction.

This principle has been settled by this Court as far back as the case of *Gaines vs. Chew*, 2 How., 619.

And followed in the succeeding cases of

86 *Shields vs. Thomas*, 18 How., 253.
Brown vs. Guarantee Trust Co., 128 U. S., 403.
Graves vs. Corbin, 132 U. S., 571.
Story Eq. Pl. (Ed. of 1892,) 259, and note on p. 259-261.

To recapitulate:

1. The State acting through its board has endeavored to enforce against one set of property holders a different rule
87 than that enforced against its other citizens and one forbidden by the State Constitution.

2. The result of this is to deny to one class of citizens the equal protection of a constitutional provision afforded to other classes of citizens.

3. That is forbidden by the Fourteenth Amendment to the United States Constitution.

4. There is no adequate remedy at law, and 88

5. The personal trespasses being many, but all acting under the same facts and justifying their acts by the same principles of law should be joined in one common proceeding to settle the question.

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